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ADMINISTRATIVE LEGISLATION IN THE NEW CODE OF CANON LAW

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LEGISLATION ON THE SACRAMENTS IN THE NEW CODE.

ADMINISTRATIVE LEGISLATION

IN THE NEW CODE OF CANON LAW

[Lib. III., Can. 1154-1551]

BY

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ADMINISTRATIVE LEGISLATION

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INTRODUCTION

JURISTS call administrative, as distinct from constitutional, legislation the laws of a society which determine, and regulate the use of the means by which its members can attain the special end of the society.

The administrative legislation of the Church is contained chiefly in the Third Book of the Code which under the generic and somewhat indefinite title of "Ecclesiastical Things" treats of the external objects used by the Christian society for attaining its end. These are the Sacraments, Sacred Places and Times, Divine Worship, Ecclesiastical Magisterium, Ecclesiastical Benefices and Church Property.

Among them the Sacraments instituted by Christ to produce Grace occupy the first and principal place. Two special volumes have been devoted to the legislation concerning them. The present one deals with the other five divisions of the Third Book (Can. 1154–1551), with the law on churches and cemeteries, Sunday observance, fasting and abstinence, vows and oaths, preaching and catechizing, schools and seminaries, and other matters of the same eminently practical character.

This law will be studied here in the light of history, of the teaching of modern canonists and of the decisions of the Commission for the Interpretation of the Code, for the sole purpose of facilitating its correct interpretation and application to the more ordinary cases without entering into long explanations or theoretical discussions.

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ADMINISTRATIVE LEGISLATION

IN THE NEW CODE OF CANON LAW

BOOK III: PART II

SACRED PLACES AND TIMES

(Can. 1154–1254.)

SECTION I

SACRED PLACES. (Can. 1154–1242.)

(S. Many, S. S., Prælectiones de Locis Sacris, Letouzey, Paris, 1904; Wernz, S. J., Jus Decretalium, Romæ, 1908; J. B. Ferreres, S. J., Institutiones Canonicæ, Subirana, Barcelona, T. ii, 1918; C. Augustine, O. S. B., A Commentary on the New Code of Canon Law, Herder, St. Louis, 1921, vol. vi; Vermeersch, S. J., Creusen S. J., Epitome Juris Canonici, Dessain, Malines, 1922, T. ii; Matthæus a Coronata, O. M. C. De Locis et Temporibus Sacris, Marietti, Torino, 1922; A. Blat, O. P., Commentarium Textus Juris Canonici, Romæ, 1924, Lib. iii, P. ii; Cocchi, Commentarium in Codicem Juris Canonici, Lib. ii, P. ii, Marietti, Torino, 1924.)

GENERAL NOTIONS. (Can. 1154–1160.)

I. DEFINITION OF SACRED PLACES.

1. A place becomes sacred in the canonical sense when by liturgical blessing or consecration it is

set aside for divine worship or the burial of the faithful.

The blessing or consecration must have for its purpose to withdraw the place from profane, and dedicate it to religious use; the blessing of houses on Holy Saturday although of a liturgical character does not transform them into sacred edifices for it does not change their destination. It is invocative not constitutive.

The Church alone gives to blessing or consecration that dedicatory efficacy; hence the necessity, for the validity of the act, of using the form and rite prescribed and found in approved liturgical books.

Blessing and consecration have essentially the same effect; they differ chiefly in solemnity, in rite, and in permanency, blessing consisting in a prayer and sprinkling with holy water whilst consecration requires unction with holy oil.

II. CONSECRATION AND BLESSING. (Can. 1155–1159.)

2. 1. *Minister of Consecration.* The consecration of a place belongs exclusively to the Ordinary in whose territory the place is located. If he has the episcopal character he may perform the ceremony himself; if he has not he may commit it to any Bishop of the same rite.

Regulars, even if their superior would enjoy episcopal powers and ordain his own subjects, must, for the consecration of their churches or cemeteries, have recourse to the local Ordinary.

Cardinals may consecrate the church and altars of their Title and with the permission of the local Ordinary any other church or altar even if they are only priests.

Vicars and Prefects Apostolic, and Vicars Capitular or Administrators of Dioceses possess in this matter the power of local Ordinaries, but not Vicars General except by special commission.

Abbots and Prelates *nullius,* once they have received the blessing may consecrate churches and fixed altars within their territory and also outside of it with the consent of the local Ordinary. (Can. 323 § 2.)

The Sovereign Pontiff can give the power of consecration to any priest but a Bishop can not do so without special delegation from the Holy See.

3. 2. *Minister of Blessings.* The solemn blessing of a place, although in itself a function of the priestly order, is reserved, not as condition for validity but only for lawfulness, to the Ordinary of the territory, not excluding in this case the Vicar General, when the place belongs to the secular clergy or to a non-exempt order or to a lay order although exempt. (Can. 488, 2°.)

If the place belongs to a clerical exempt order the major superior may impart the blessing.

Both the local Ordinary and the religious superior may authorize another priest to give it in their name.

4. 3. *Consent of the Ordinary.* All privileges to the contrary notwithstanding no one may consecrate or bless a sacred place without the consent of the Ordinary.

For a consecration the consent required is that of the local Ordinary; for a blessing that of the local Ordinary or of the major superior of the order according as the place belongs to the secular clergy or to a clerical exempt religious order. Some think that a Bishop would need the permis-

sion of the superior lawfully to consecrate a church located in his territory but belonging to an exempt order. (Vermeersch, n. 471.) This does not, however, seem to be the meaning of this Canon (1157).

4. *Record and Proof.* (*a*). A record should be kept of every consecration or blessing and a copy of it preserved in the archives of the particular church and another in those of the diocese or perhaps in the archives of the order when the place thus consecrated or blessed belongs to exempt religious.

(*b*) In the absence of an official document or other evidence the testimony of a trustworthy witness suffices as a proof of consecrations and blessings provided this does not affect the interests of a third party.

(*c*) Consecration and blessing admit of no repetition as their effect lasts indefinitely; but if a serious doubt arises as to their reality or validity the law permits to perform the rite not conditionally but as a measure of prudence, *ad cautelam*.

III. EXEMPTION OF SACRED PLACES. (Can. 1160.)

The civil power has no jurisdiction over sacred places and may not, for example, dispose of them, administer, or impose taxes upon, them. As set aside for a religious purpose they must, by ecclesiastical and also by divine right, depend exclusively on the religious authority. The Church, therefore, through her legitimate representatives, ought to enjoy complete freedom in the exercise of jurisdiction over them.

TITLE IX

CHURCHES

(Can. 1161–1187.)

(Many, n. 1; Wernz, n. 426; Gasparri, De SS. Eucharistia, n. 121; Vermeersch, n. 475; Blat, n. 9; Cocchi, n. 6; Coronata, n. 10; Thomassin, Ancienne et Nouvelle Discipline de l'Eglise, P. i, L. 2, c. 92; P. ii, L. 3, c. 95; Duchesne, Christian worship, c. xii; Bingham, Antiquities of the Christian Church, B. viii; A. S. Barnes, The early Church in the light of the monuments, P. iii, The development of Church building, Longmans, Green and Co., Ltd., London, 1913; Dictionnaire d'Archéologie Chrétienne et de Liturgie, Basiliques, Eglises.)

I. ORIGIN AND DEFINITION. (Can. 1161.)

5. 1. The first Christians held their special meetings particularly for the Breaking of Bread in private residences. (Acts i, 13; ii, 46; x, 6–9; xix, 9; Rom. xvi, 5; Col. iv, 5; I Cor. xvi, 19.) When with the growth of the community these proved insufficient entire private houses purchased or donated by the owners for this purpose were turned into churches. Portions of them served as places of worship; the clergy occupied some of the others and they kept in some the sacred vessels and vestments and provisions destined for the poor. These are the *domus ecclesiae* or the *ecclesiae domesticae* which we meet with in the

second and third centuries and which became the *domus Dei* or *Dominicum* when gradually public worship assumed a more exclusive importance and the clergy went to live in distinct buildings.

At times, even in the days of the Apostles (Acts xix, 9) but more frequently at a later period, the Christians assembled in public halls or *scholae* which served as meeting-places of the various guilds or *collegia* so numerous then in the Roman empire. As many of these were concerned with burials they had their *scholae* near the cemeteries. The Christians too formed funeral colleges and had their *scholae* at the catacombs.

In the catacombs themselves underground they used also as places of worship, particularly in times of persecution, some of the larger *cellae* generally at the shrines of the martyrs. We have examples of this in the crypt of the Popes at St. Callixtus and in the Ostrian cemetery on the Via Nomentana.

When persecution broke out these churches would be destroyed or confiscated but some of them were afterwards restored to their owners. Eusebius has preserved an edict of emperor Gallienus ordering such a restitution. (H. E. vii 13.) The same historian relates how Diocletian commanded the destruction of all the churches which Christians possessed in nearly every city at the beginning of the fourth century. (H. E. viii, 1, 2.) According to St. Optatus Rome had forty at that time. (De Schismate Donatistarum, L. ii, n. 4.) After the Edict of Milan (313) their number increased rapidly everywhere.

6. 2. Early Christian writers after St. Paul himself (I Cor. xi, 22) call *ecclesia,* church, not only

the assembly of the faithful but their place of meeting as well. (Tertullian, De pudicitia, 4.) From the third century on they use also other names, such as, *dominicum,* basilica, temple, oratory, and for edifices erected on the tombs of martyrs, *martyrium, confessio,* or *memoria.* In the course of time custom confirmed afterwards by decisions of Congregations reserved the name of oratory to sacred buildings intended for more particular or private purposes and generally of smaller size. (Many, n. 2.)

Accordingly the Code defines a church in the strict canonical and liturgical sense as a sacred edifice dedicated to divine worship chiefly for the use of all the faithful and the public exercise of religion.

Divine worship here includes all sacred functions such as the administration of sacraments, the preaching of the word of God and principally the offering of the Holy Sacrifice.

Some oratories are open also to the public but even those are intended first for the convenience of a special community or the promoting of a special work, not like churches for the use of the faithful in general and the public exercise of divine worship.

Among the various kinds of churches may be mentioned the basilicas, a title given to the four most illustrious Roman sanctuaries and extended to a few others, the cathedral, metropolitan, or primatial churches in which is a titular episcopal, metropolitan or primatial see, the collegiate or regular churches which are attached to a college or religious community, the parochial, baptismal churches, etc.

II. ERECTION OF CHURCHES. (Can. 1162–1164.)

7. 1. *Consent of Bishop.* (Can. 1162.) (*a*) *Necessity.* The Council of Chalcedon (451, Can. 4) explicitly forbade the erection of a monastery or oratory without authorization from the Bishop of the city. The Code confirming this ancient provision often renewed since requires for the building of any church the express and written consent of the local Ordinary which in this case, as explicitly stated, does not include the Vicar General except by special mandate. Oral consent would, no doubt, suffice for the validity of the proceedings but not for their lawfulness.

This law applies also to religious, even to exempt religious. Permission to establish a new house in a diocese or city implies in the case of clerical communities authorization to open a public chapel or church (Can. 497 § 2) but they must obtain the Ordinary's approval of its exact location.

The Ordinary may give his consent with some restrictions provided they be not against the common law. Thus he may stipulate that religious services shall not be held in the chapel at the same time as in the parochial church of the place, but he could not prevent the faithful from fulfilling therein the obligation of the Sunday Mass; nor can he put those restrictions later on.

8. (*b*) *Conditions.* The Ordinary may not grant or refuse his consent at will. He should not refuse it without reasonable cause, on which, in case of controversy, higher authority would pronounce. On the other hand before granting it he must have proofs that sufficient resources for the building and support of the church and clergy

will not be wanting and that the new church will not become a detriment to those already in existence without spiritual advantage to the faithful as compensation.

1°. Ancient Councils always insist on sufficient endowment as a condition together with the Ordinary's consent for the founding of a church. St. Gregory the Great demands of Count Aprutianus who wished to have an oratory on his estate, a farm with its homestead, a yoke of oxen, two cows, four pounds of silver, fifteen head of sheep, and the proper implements of a farm. (Epist. 12.) Decretal Law requires for each church one *mansum*. (1, x, iii, 39; Ducange, Glossarium, mansus.) According to the Council of Trent an annual income of 100 ducats would seem strictly sufficient for a parochial church. (Sess. xxiv, 3. 13, De Ref.) As this necessarily varies with times and places the present law leaves it to the prudent appreciation of the Bishop to determine how much shall be necessary both for the building of the Church and its support with that of the clergy attached to it. (Can. 1545.)

In estimating the resources of a parish church the Ordinary may take into account not only the property belonging to it but also contributions due by a family or moral person, offerings of the faithful, stole fees approved by diocesan statutes or custom. (Can. 1410.) Even if he could not secure the proper endowment he might still erect a parish church as long as he would have no doubt that the necessary support will come from some source. (Can. 1415 § 3.) Should a church be needed by the people but have no resources he might erect it and attach it to another till it be-

comes self-supporting. (Cons. Cong., Aug. 1, 1919; A. A. S., 1919, p. 348.)

Churches or chapels of religious do not require an endowment distinct from that of the community.

9. 2°. The possible loss caused to other churches does not prevent the erection of a new one when the good of souls demands it. To ascertain the fulfilment of this condition the Ordinary, before granting permission, should consult the rectors of the neighboring churches. He does not have to follow their advice.

Should they consider themselves unnecessarily injured in their interests by the building of the new church they may sue for an injunction before the judge. This regularly stops the work while the case is pending, but if the builder guarantees complete restoration to the original condition should the sentence go against him, the judge may allow him to continue. The plaintiffs have two months to prove their contention. (Can. 1676; Ephemerides Liturgicæ, April, 1922, p. 148.)

10. 2. *Blessing and Laying of the Corner Stone.* (Can. 1163.) The Roman Pontifical and Ritual which prescribe this ceremony in the erection of churches define also its rite and various requirements. The Code here only states that it belongs to the same persons as the blessing of sacred places (Can. 1156) that is, for the churches of clerical exempt religious, to the major superior, for all the others, to the local Ordinary. (Ephemerides, l. c., p. 148.) They may always delegate this power.

11. 3. *Form and Construction.* (Can. 1164.) (*a*) Ancient churches were generally oblong,

some of them round, octagonal, and a little later, cruciform. Much variety prevailed in the beginning both as to their internal organization and external appearance as the first Christians had to use private houses or public buildings and temples which they adapted to their needs. In the course of time various styles of ecclesiastical architecture were developed and whilst they left much room for freedom they introduced certain forms in church building which distinguished a place of Christian worship from any other edifice.

The common law does not enter into any details on this subject but it recommends to Ordinaries to see that in the building and repairing of churches the traditional forms be not departed from and the rules of Christian art be adhered to; it suggests without perhaps commanding it that the best authorities on the matter be consulted when necessary or advisable. Some dioceses have for this purpose a special board or commission composed of ecclesiastics and some particularly competent laymen.

(*b*) For a different reason it is forbidden, in the building of a church or afterwards, to open a door or window leading from it into the house of lay people. This does not apply to clerical or religious houses.

Nor should the crypt or basement of the church or any room under or above it serve for merely profane uses, such as purely secular amusements, dances, balls, noisy banquets, theatrical performances. (S. R. C., May 4, 1882.) The S. Congregation did not approve of a wine cellar under the church nor of a dormitory for clerics above. (May 11, 1641, n. 3157, 756.) In another case

it tolerated bedrooms above an oratory provided they were separated from it by a double ceiling or the altar was covered with a *baldacchino*. (Nov. 23, 1880.)

The same objection does not exist against sodality meetings, parish schools, parish libraries, etc.

III. DEDICATION OF CHURCHES. (Can. 1165–1177.)

(Many, n. 10; Wernz, n. 436; Gasparri, 149; Duchesne, c. xii; Coronata, n. 20.)

12. 1. *Origin and Necessity.* (Can. 1165.) 1°. The historian Eusebius (H. E., x, 3, 4) tells us of numerous and solemn dedications of churches which followed the Edict of Milan. (313.) Similar ceremonies of which no records remain must have taken place before although more privately, for in the fourth century the rule existed already of always dedicating a church to the divine services by special prayers before using it.

The rite of consecration originally simpler attained its elaborate present form about the eleventh century. With the multiplication of churches at that time Bishops often found it difficult to consecrate them as rapidly as needed and thus it became the custom to use them temporarily after they had received a simple, shorter blessing which priests could impart by delegation from the Ordinary. (9, x, iii, 49; 10, x, iii, 40.) This blessing, at first a temporary substitute for consecration gradually became permanently sufficient in many cases at least. Two forms of dedication of churches were thus recognized, a more solemn one reserved to Bishops and called consecration;

and a simpler, shorter one, easily delegated to priests and called blessing. They consist essentially, the former in twelve unctions with Chrism made on the crosses painted or carved on the wall, the latter in the sprinkling of the walls with holy water.

2°. Before holding divine services in churches or public oratories these must be consecrated or at least blessed. In urgent cases the Ordinary might probably make an exception to this rule, at least a few times in passing. (Many, n. 19.)

The present law, less exacting in this respect than some ancient rubrics of the Pontifical or decrees of Congregations prescribes absolutely the consecration of cathedrals and only conditionally, when circumstances permit, that of collegiate, conventual, or parochial churches.

13. 2. *Conditions and Circumstances of Consecration in Particular.* (Can. 1165–1167.) 1°. By consecration and also by blessing a church becomes dedicated to divine worship in a permanent manner; hence if the Ordinary foresaw that it would probably be turned to profane uses he should not allow its erection or at least not its consecration, nor even its blessing. The case might occur, for example, if the church belonged to a private family and might pass into the hands of less favorably disposed persons, or if the church was burdened with a very heavy debt and mortgage.

2°. A church built of wood, of iron, or of some other metal may be blessed but not consecrated. The Cong. of Rites declared lawful the consecration of a church built in reinforced concrete as long as the places for the twelve crosses and the

door posts at the main entrance would be of stone. (Nov. 12, 1909, n. 4240.)

3°. It is permitted to consecrate an altar without consecrating the church but together with the church the main altar or if this one is already consecrated, one of the others must receive the consecration; this not for the validity but for the lawfulness of the ceremony.

14. 4°. The consecration of churches may take place on any day, except on such a day, for example, as Good Friday, but Sundays or Feast days of obligation should have the preference as more suitable for this function. (Ephemerides Liturgicæ, Feb. 1923, p. 58.)

The Roman Pontifical or Ritual describes in detail the rites of consecration or of blessing which should be observed carefully.

5°. The officiating prelate and those who have petitioned for the consecration must fast the day before; the law does not mention abstinence here.

This obligation generally considered as grave affects, besides the Bishop, only those who have asked for the consecration as, for example, the pastor, the superior or superiors of a community, the college that made the request as a body including those who might have voted against, but not the whole parish or community or clergy of the church if they had nothing to do with the request. Neither would the obligation exist for a chaplain who would simply submit the petition in the name of sisters but not as in any way asking for a favor for himself. (Cong. Con., July 3, 1909; Canoniste Contemporain, Nov. 1909, p. 676.)

6°. On the occasion of the consecration of a

church or altar the officiating Bishop, even if he has no jurisdiction in the territory, grants an indulgence of one year to all who visit the church or altar on that day; and for visits on the anniversary a Bishop grants 50 days, an Archbishop, 100, a Cardinal, 200.

7°. The clergy attached to the church must keep every year the anniversary of its consecration in conformity with liturgical rules, that is, as a feast of Our Lord, double of the first class with octave.

The Holy See by special Indult permits at times the celebration on the same day of the dedication of all the churches consecrated in the diocese, country or religious order. The anniversary of a simple blessing is not kept. (Ephemerides, Feb., 1923, p. 61; Nouvelle Revue Théologique, Aout 1912, p. 453.)

15. 3. *Title of Churches.* (Can. 1168.) 1°. Every church consecrated or only blessed must have a title or name. Custom and liturgical law permit to take as title for a church any person or mystery that may be the object of public devotion: the Blessed Trinity, Our Lord, one of His Mysteries, the Blessed Virgin and her various prerogatives, the Holy Angels, canonized saints.

To take one only beatified would require an Apostolic Indult.

2°. The title is chosen by the Ordinary or with his approval at the laying of the corner stone and finally adopted at the dedication of the church. From this moment, only the Holy See would have authority to change it, at least after consecration (Vermeersch, n. 485) and more probably even

after solemn blessing. (Coronata, n. 24; Ephemerides, Oct., 1923, p. 380.)

3°. Ordinarily a church has only one title; it may be dedicated to two saints whose feast is celebrated on the same day like SS Peter and Paul, or also but more rarely to several saints honored on different days.

4°. The clergy attached to a church whether consecrated or only blessed must celebrate every year its titular feast as one of the first class with octave and the clergy of the whole diocese must keep in like manner the titular feast of the cathedral church.

4. *Church Bells.* (Can. 1169.) (Catholic Encyclopædia, Bells; Dictionnaire d'Archéologie Chrétienne et de Liturgie, Cloche; Month, June 1907, p. 634; Nov. 1909, p. 483; Revue du Clergé Français, 1902, T. xxix, p. 337; 1908, T. liv, p. 252.)

16. 1°. *Origin and Necessity.* (*a*) The use of bells goes back to pre-Christian times. Among the Greeks and Latins as Strabo and Martial inform us the *kodon* or *tintinnabulum* served to announce the opening of public baths and markets. During the persecutions Christians had to hold their meetings secretly; they summoned the brethren through a messenger, a deacon, *cursor, præco, monitor,* or they simply gave notice of the next assembly in church, the *cursores* going only occasionally to remind careless members of their duty. (Dictionnaire, col. 1967.) But when they enjoyed freedom they too adopted the practice of calling the faithful to the assemblies by means of various instruments employed in the

country for similar purposes, gongs, clappers, bells.

According to the Rule of St. Pacomius a trumpet summoned the Egyptian monks to prayer; the Greek *cenobites* used a clapper, *semantron,* wooden board, or flat plate of metal which they struck with a hammer. In the West Christian writers refer habitually to bells designated as *signa, campanae, nolae, cloccae* or *cloggae,* and in a few places as *cacabula.* St. Benedict exhorts his monks to leave for the divine office at the first sound of the *signum.* (Reg., c. 43.) St. Gregory of Tours (585) speaks of *signa* rung, struck, or shaken by means of a cord to rouse monks from their beds and summon them to matins. (De Vita Sti Martini, i, 28; Dictionnaire, col. 1960.)

From monasteries the use of bells passed into parish churches, probably in the course of the sixth or seventh centuries. By the end of the eighth they had become quite common and assumed large proportions as shown by the numerous towers built during that period to receive them. The capitularies of Charlemagne suppose that each parish church had at least one bell. Later documents speak of five for cathedral churches, two or three for parish churches, and one for the others.

In the thirteenth century some Prelates wished to prevent religious from having bells except for domestic use. Pope Gregory IX did not approve them (1235, 16, x, v, 31) but Pope Celestine III forbade the public use of bells in private chapels. (10, x, v, 33.) John XXII allowed Mendicant

Friars to have only one bell in their churches. (1, i, 5, in Extravag. Comm.) Custom, however, and subsequent decrees had mitigated this discipline maintaining it in its former severity for private oratories alone. (F. Piat, Prælectiones Juris Regularis, ii, Q. 96; Wernz, l. c., n. 521; Coronata, n. 34.)

(*b*) The present law declares it proper, not strictly obligatory, for all churches to have bells. It does not make any distinction between churches belonging to Regulars or to Mendicant Friars and others.

17. 2°. *Use of Bells.* (a) The first purpose of church bells was to call the faithful to the religious services; they were used also to give notice of deaths and funerals, to announce the great liturgical feasts, to remind the people on the eve of a fast day of their obligation on the morrow, to invite them at night to pray for the dead. They were rung for the visit of the Bishop or sometimes of secular princes and on such occasions as solemn processions, marriages, days of national rejoicings, when a storm or other dangers threatened the community, etc.

(*b*) The Church always claimed exclusive control of blessed or consecrated bells and prohibited use of them for purely secular purposes. The Code affirms the same principle and lays down the same general rule but it admits also of exceptions and permits the ringing of bells for purposes not strictly religious if with the approval of the Bishop a stipulation to that effect had been made by the founder or in cases of necessity, for example in time of war, of flood, fire, etc., or with the approval of the Ordinary on the occasion of a

national victory or similar event, and whenever a legitimate custom sanctions the practice.

18. 3°. *Blessing or Consecration of Bells.* Church bells must be consecrated in accordance with an old tradition going back to the eighth century. The Roman Ritual and Pontifical contain the form of blessing and of consecration respectively. The rules given above for the blessing or consecration of places apply here also. The Holy See alone can delegate or grant powers to delegate a priest for the consecration of bells. In a consecrated church the bells must themselves be consecrated. (S. R. C., Jan. 22, 1908, n. 4211.)

19. 5. *Execration of Churches or Total Loss of Consecration or Blessing.* (Can. 1170.) Some ancient canonists considered consecration as attached to the walls and blessing to the floor, hence they explained differently the loss of one or the other. Recent decrees of Congregations did not make or imply this distinction and the Code simply assigns three causes for the loss of either consecration or blessing: total destruction of the church, fall of the greater part of the walls, and reduction by the Ordinary to profane uses.

(*a*) Destruction of the church as an edifice, for example, by earthquake would suffice without destruction of the materials which might serve for a new building.

(*b*) A church would not lose its dedication by the collapse of the roof or of the tower or floor, or of part of the wall as long as the greater portion of it remains standing, nor by successive repairs which might eventually affect the whole structure as long as it affects only a minor portion of the walls at a time; nor by additions provided

they do not surpass in importance the original building and the latter retains substantially its form; nor by interior alterations such as removal of the whole plastering and substitution of a new one or of a marble covering.

In several of these cases the consecration crosses would have to be replaced.

(*c*) The Ordinary as said in Can. 1187 may, under certain conditions, reduce a church to profane use and thus cause it to lose its consecration or blessing; but use of it for such purposes by one without authority would constitute desecration or moral violation calling for reconciliation, not execration which requires new dedication.

By execration of the church the altars do not lose their consecration, nor vice versa.

In the re-consecration or blessing the church may receive another title or preferably have a new, added to the old one. (Vermeersch, n. 486.)

20. 6. *Services Permitted in Churches.* (Can. 1171.) (*a*) By consecration or blessing a sacred edifice becomes sanctified and a fit place for the celebration of the divine offices (Can. 1165) and all ecclesiastical rites, excepting those which belong exclusively to parochial churches (Can. 462, 481) or which special privileges or legitimate custom might have reserved to certain churches or chapels as in some cases rights of burial.

(*b*) The Ordinary, however, exercises general supervision over all non-exempt churches and chapels and he has the right amongst other things to fix the hours of their services. For this he should have a good cause as, for example, to prevent conflict with the parish church. The Con-

gregations have decided several times that a Bishop could not forbid the celebration of Mass in public chapels or churches before the end of the parochial Mass as some pastors demanded. (S. C. C., Oct. 6, 1625; S. C. Prop. Fid., Jan. 26, 1688, Coll., n. 166.)

(*c*) Even in exempt churches the Bishop has the right to see that their services do not interfere with the catechetical instruction or the explanation of the Gospel given in the parish church. He may, therefore, forbid the holding of services during that time if they take the people away from the instructions unless the same instructions be given in those churches. (Can. 609 § 3.)

21. 7. *Desecration or Violation of Churches.* (Can. 1172–1177.) 1°. *Nature.* Desecration as understood here does not like execration entail the total loss of consecration or blessing but only the temporary suspension of some of their effects due to a profanation or improper use by which a church becomes legally defiled and unfit for divine services till purified from this juridical stain by reconciliation.

2°. *Causes.* The present law recognizes four:

(*a*) Criminal Homicide which according to common interpretation includes suicide. The manner of death does not matter, whether by poison, strangulation, or otherwise as long as it is fully imputable and unjust. Causing the death of another in self-defence or under the influence of grave fear would not come under this rule; nor would the execution of a judicial capital sentence, although it might induce desecration on another ground. (Many, n. 30.)

(*b*) Shedding of blood grave and unjust, that

is, grievously sinful and sufficiently copious to constitute a serious injury to the person and irreverence to the edifice.

(*c*) Impious and sordid use of the church. This provision has no strict equivalent in the former legislation and, therefore, the teaching of ancient canonists supplies no interpretation for it.

The term "use" seems to suppose, at least in certain cases something more than an individual act (Coronata, n. 28); it implies that the church serves for unworthy purposes. The mere commission of a sacrilegious theft, for example, would not cause desecration; the robber does not really use the church.

We may consider as impious: acts contrary to the virtue of religion like the exercise of heretical or superstitious worship, and also acts legitimate in themselves but repugnant to the sacred character of the house of God, such as the execution of a capital sentence. (Vermeersch, n. 489.)

Sordid uses may not have any special moral character but they defile the church rather materially and render it unfit for religious services. The Congregation ordered the reconciliation of a church which had served as barracks and for the quartering of horses and mules. (S. R. C., March 3, 1821.) Holding popular or political meetings in a church, although unbecoming and unlawful, would ordinarily not have the character of sordidness necessary to pollute it.

(*d*) Burial of an infidel or of one excommunicated by declaratory or condemnatory sentence.

Although ecclesiastical burial includes also the transfer of the body to the church and the funeral service (Can. 1204) we must understand it here

in the restricted sense of entombment as generally taught by canonists and clearly implied by the law itself. (Can. 1175, 1205.)

According to common interpretation the term infidel here does not include catechumens nor children of Catholic parents dying before baptism. Some canonists would even restrict its application to grown up, wilful infidels.

Under the former discipline burial of an *excommunicatus vitandus* alone violated a church. The present law having modified the conditions for becoming *vitandus* extends this exclusion to all who have become excommunicated by declaratory or condemnatory sentence whether *vitandi* or not. As long as there must be a special sentence the cases will remain rare.

3°. *Conditions.* Only the four causes here mentioned, under the present law, produce desecration. To have this effect the acts must be certain, excluding all reasonable doubt whether of law or of fact; notorious either in law by a judicial sentence, or in fact as generally known or likely soon to become so (Can. 2197); and committed in the church itself.

If committed in the sacristy, on the roof, in the tower they do not desecrate the church; if in the crypt or basement they do when the latter communicates directly with the church and thus forms part of it, otherwise they do not.

An act is considered as taking place in the church when it has its effect therein even though originating outside, as if in a case of homicide the victim would receive the fatal wound in the church whilst the aggressor fired from the neighboring house. On the contrary if the murderer fired

from the church and killed a person in the street there would not follow any desecration.

The church or chapel must be consecrated or blessed. (Many, n. 39.)

22. 4°. *Consequences of Desecration.* (Can. 1172, 1173.) (*a*) In a desecrated church it is unlawful before reconciliation to celebrate the sacred offices, administer the sacraments those at least which regularly ought to be administered in church, or to hold burial services.

(*b*) If the desecration takes place during the divine offices these must cease immediately; if before the canon of the Mass or the Communion, the Mass must be discontinued; if between the beginning of the canon and Communion, Mass should be continued till the Communion.

In cases of necessity the Ordinary might permit the use of the church before reconciliation; in urgent cases a priest might presume this permission.

(*c*) Under the present law desecration of the church does not involve desecration of the cemetery and vice versa, even when the cemetery adjoins the church.

5°. *Reconciliation of Desecrated Churches.* (Can. 1174–1177.) (*a*) *Necessity.* The purification or reconciliation of a church juridically defiled or desecrated should be effected as soon as possible according to the rites prescribed in the liturgical books, that is, in the Roman Pontifical and Ritual. It would not suffice, for example, to celebrate the Holy Sacrifice in the church to reconcile it.

In cases of doubtful desecration reconciliation is permitted provisionally but not prescribed.

(*b*) *Special Condition.* When desecration arises from the burial of an infidel or of an excommunicated person the law demands as a condition for reconciliation removal of the body provided this does not offer grave inconveniences.

(*c*) *Minister.* A church merely blessed not consecrated may be reconciled by its rector and with his at least presumed consent by any other priest.

The reconciliation of a consecrated church belongs to the same superior as its blessing, i. e. to the local Ordinary or the major superior in an exempt clerical order or to a priest delegated by either of them. (Can. 1156.)

Under the present law, however, in grave and urgent necessity and in the impossibility of reaching the Ordinary, the rector may reconcile the church and notify the Bishop afterwards.

(*d*) *Manner.* For the reconciliation of a merely blessed church ordinary holy water suffices. The reconciliation of a consecrated church requires water specially blessed for the purpose as prescribed by liturgical law. At present not only Bishops but also priests who perform the act of reconciliation have power to impart this blessing. For this as for all the other rites and ceremonies they follow the prescriptions of the Ritual.

IV. IMMUNITY OF CHURCHES. (Can. 1178, 1179.)

23. 1. *Respect Due to Them.* 1°. Respect due to churches demands of all who in any way have charge of them that they maintain therein the strict cleanliness which becomes the house of God. This concerns first the rector, superior, chaplain, or pastor.

2°. Natural and ecclesiastical law forbid the use of them for profane purposes which although legitimate in themselves are little in keeping with the holiness of places of worship.

(*a*) The Code here mentions explicitly business transactions and fairs even for a pious cause. Canonists and ancient legal texts exclude also profane theatrical representations, public meetings of secular societies, banquets, noisy gatherings, profane discussions, lascivious or impure music, secular trials, civil and criminal. (2, iii, 23, in VIo; Wernz, n. 447; Many, 44.)

(*b*) Much may depend in this matter on local public sentiment, customs, and legislation. What would seem unbecoming in one place may prove acceptable in another. Ordinaries may for special reasons forbid in their respective dioceses practices tolerated in others.

(*c*) The Consistorial Congregation pronounced absolute exclusion from churches against all even pious theatrical performances and cinematographic representations. (Dec. 10, 1912.)

For grave reasons the Holy See tolerated exceptionally the practice existing in some parts of Germany of holding protestant and Catholic services in the same church. (Coronata, n. 41.)

In 1887 (July 14) the Congregation of Rites declared unlawful the introduction into churches of flags other than religious ones for which the Ritual has a blessing. The Holy Office tolerated the national flag at funerals as far as the door of the church exclusively (Oct. 3, 1887) but a little later by reason of special circumstances it allowed the flag of the United States into the church during religious services and funerals provided

this would not imply disregard for liturgical prescriptions. (March 22, 1911; Ami du Clergé, 14 Août, 1913, 691; Canoniste Contemporain, 1911, p. 477.) The same privilege might, no doubt under similar circumstances, be extended to the flags of other nations particularly on the occasion of ceremonies of a national or somewhat military character.

(*d*) It is customary in some countries to hold in churches theological disputations, literary exercises, musical concerts, Catholic congresses, school commencements, academic meetings; in others synodal decrees forbid these. (Wernz, 447.)

By custom it seems to have become also lawful to sell candles or other pious articles at the door or in the vestibule of the church provided this occasions no disorder and in no way interferes with the services. (Many, n. 44; Cocchi, n. 20.)

24. 2. *Right of Asylum Called also of Sanctuary or Refuge.* (Wernz, iii, n. 448; Many, n. 47; Thomassin, o. c., P. ii, L. iii. c. 95–101; Bingham, o. c., B. viii, c. 11.)

1°. *Origin.* Under the Old Law the Jews had cities of refuge to which whosoever had shed blood unawares might flee to escape the wrath of the victim's kinsman. (Num. xxxv, 11; Jos. xx, 3–9.)

Among the Greeks some temples afforded similar protection to all who sought it and could prove their danger.

After the conversion of Constantine Christian churches naturally enjoyed the same privilege first by common consent and custom, then by the law of Emperor Theodosius in 392.

Originally this privilege attached only to the altar and nave of the church but a law of Theodosius II (431) extended it to the houses and lodgings of the Bishop and clergy, to the gardens, courts, and cloisters. Other places shared in it afterwards, the graves of the dead, schools and monasteries, hospitals, also the Cross, the Emperor's statues and standard in the camp.

Under Justinian the period of sanctuary lasted for 30 days; subsequent laws increased it to 40 whilst others reduced it in some cases to 3 or 4. During that time the Church supported the refugees if they had no means of their own else they received only protection.

The purpose of this privilege was to shelter the innocent, the injured, and oppressed, in doubtful cases to secure for the accused an equitable and fair hearing and save them from over hasty and rigorous punishments or at least to give Bishops an opportunity to intercede for criminals and obtain from judges not seldom inclined in those days to excessive severity that they temper justice with mercy; but not to prevent the application of law and encourage disorder. The Code of Theodosius denied the right of sanctuary to men guilty of particularly heinous offences, public debtors or embezzlers, Jews who simulated conversion to escape punishment, apostates, heretics, traitors, murderers, adulterers, ravishers of virgins.

25. 2°. *Ancient Canonical Law.* Various particular Councils adopted and completed the legislation of the empire. (Orange, 441, Can. 5; Arles, 443, Can. 30; Orléans 511, Can. 1; Epaone, 517, Can. 8; Toledo, 681, Can. 10;

Mayence, 813, Can. 39; Rome, 1059, Can. 29; Pisa, 1134, Can. 14; Rouen, 1190, Can. 18.)

It gradually obtained the force of common law by custom and formally by the decrees of Innocent II (Lateran, 1139, Can. 15) and of Innocent III (6, iii, x, 49). These enact that persons taking refuge in a church may not be repelled nor taken out by violence, nor condemned to death or to a corporal punishment although they do not escape all penalty. They claim this protection right for all churches without distinction which includes also their dependencies and according to common interpretation or later decrees, public chapels, monasteries, seminaries, hospitals, episcopal residences, cemeteries, and all places dedicated by the Ordinary to religious or charitable works.

All men might invoke the protection of the Church, even heretics, pagans and Jews but not all classes of offenders. (Many, n. 52; Pennacchi, In Const. Ap. Sedis, t. i, p. 679–690.)

26. 3°. *Present Discipline.* In modern times civil governments have little by little, directly or indirectly, at least partially and often entirely withdrawn recognition of the right of sanctuary thus voiding it of all practical value. The Holy See, however, continued to defend it and Pius IX in the Const. Apostolicæ Sedis (1869) renewed the censures pronounced against violators.

The Code enacts again that churches enjoy the right of asylum so that criminals who seek protection therein may not be taken out without the consent of the Ordinary or at least of the rector except in cases of urgent necessity. Thus it maintains the principle but notably restricts its applications and mentions no penalties for offenders.

In accordance with a custom which had generally prevailed in modern times it claims the privilege only for churches which at most would include also public chapels.

The Ordinary and even the rector of the church may, not only in excepted, but in all, cases deliver the refugee to the secular judges; in cases of urgent necessity no permission is needed to extradite him.

V. TITLE OF BASILICA. (Can. 1180.)

27. 1. The ancient Romans called basilicas halls employed as places of meetings or courts of justice, usually oblong in form and with a semicircular apse at one end for the judge or presiding officer. Some although not all had columns dividing the room into a nave and aisles.

Writers of the fourth or fifth century give this name to Christian churches built on this or a similar plan and then to all indiscriminately but gradually use reserved it for churches of special splendor and prominence which it distinguished also into major and minor basilicas according to the degree of dignity and the nature of privileges.

There are four major or patriarchal basilicas, all in Rome: St. John Lateran, St. Peter's on the Vatican, St. Paul's outside the walls and St. Mary Major, considered respectively as the churches of the Pope Patriarch of West, of the Patriarchs of Constantinople, Alexandria, and Antioch. Some consider the basilica of St. Lawrence outside the walls as the church of the Patriarch of Jerusalem. These enjoy very special privileges. Only the Pope or one authorized by him may celebrate Mass at their main altar and they have the

holy door opened only the year of the Jubilee by papal authority.

Minor basilicas share in some of these privileges, notably the right to the *conopæum,* the *tintinnabulum* and the *cappa magna* for the members of their chapters. (Many, n. 63, 64; Dictionnaire d'Archéologie Chrétienne et de Liturgie, Basilique; John, A. Nainfa, Ecclesiastical Review, January, 1928, p. 1.)

2. Only those churches may take the title of basilica which have received it from the Holy See or possessed it from time immemorial. The papal rescript in one case and custom in the other will define their privileges.

VI. FREE ADMISSION TO DIVINE SERVICES. (Can. 1181.)

28. 1. The Holy See has on several occasions clearly manifested its mind on this point. In 1861 the Fathers of the Provincial Council of Cincinnati having abstained from reproving the practice which existed then in three cities of the Cleveland diocese of collecting entrance fees at the door of churches the Prefect of the Congregation of the Propaganda informed them that said practice did not meet with the approval of the Holy Father who required its elimination within two years. (Coll. Lacensis, iii, col. 230.)

The same Congregation had an amendment in this sense introduced likewise in the Acts and Decrees of the Second Plenary Council of Baltimore (1866, p. cxli, 18; n. 397) as afterwards in those of the Second Provincial Council of Australia (1869, Coll. Lac., iii, col. 1085). The abuse continued, however, and in a letter of Aug.

15, 1869, the Congregation condemns it again and strongly urges the Bishops of the United States to do all in their power for its prompt correction, using even ecclesiastical penalties if necessary.

The Third Plenary Council of Baltimore (1884, n. 288) renewed the condemnation and the warning but again a few years later (Sept. 29, 1911; A. E. R., Nov. 1911, p. 594) the Apostolic Delegate to the United States, in consequence of complaints addressed to him from various parts of the country, felt compelled to call the attention of Ordinaries once more to former decrees and ask for their strict enforcement.

2. The Code has extended to the Universal Church the legislation promulgated first for the United States and Australia demanding free admission into churches for the divine services.

It condemns admission fees but not v. g. collections during the services, pew rent, or compensation for special privileges.

This applies to admission for divine services which seems to include sermons and instructions as explicitly mentioned in the letter of the Propaganda (Aug. 15, 1869) but not for other purposes as, for example, a sacred concert.

VII. ADMINISTRATION OF THE TEMPORAL PROPERTY OF CHURCHES. (Can. 1182–1185.)

In another part of this Book (Can. 1519–1528) the Code lays down the rules which govern the administration of church property in general under the supervision of the Ordinary and the Holy See. Here it treats of the property of particular churches, of that portion of their resources

which serve for the church itself, for its repair or embellishment and for the divine worship, and also of the offerings made to the church for various uses. It does not deal with beneficial property nor with that which belongs to the rector like stole fees or other contributions. (Wernz, iii, n. 191.)

Neither does it define the modalities of the administration so much as determine those to whom it belongs and how far their authority extends.

29. 1. *Administrators.* 1°. Except for some special provision or legitimate custom to the contrary the administration of the revenues destined for the repair or embellishment of the church or for divine service belongs in cathedral churches to the Bishop and the chapter, in collegiate churches to the college or chapter, in other churches to the rector.

In cathedral churches that have no canonical chapter the whole responsibility rests with the Bishop. The diocesan consultors assist him in the government of the diocese but not in the administration of cathedral funds. (Can. 424.) By special disposition of law (Can. 630 § 4) in the churches of regulars the administration belongs to the superior, not to the rector.

2°. The administration of offerings made in favor of a church or mission or of a church located within the boundaries of the parish or mission belongs also to the pastor or rector of the mission unless the church in question has its own distinct administration or unless a particular law (Can. 630 § 4) or a legitimate custom rules otherwise.

3°. Parish priests, rectors of missions or of

secular churches whether they themselves are secular or religious must administer these offerings in accordance with canonical prescriptions and render an account to the Ordinary every year. (Can. 1525.)

This rule applies also to religious who have charge of a parish or mission whether the latter is secular or religious; the distinction is made only in the case of simple churches without parochial or missionary character. The rector of these does not have to give an account to the Bishop if they belong to the order. (Can. 533 § 1, n. 4; 535 § 3, 20.)

30. 2. *Board of Trustees or Council of the Church Fabric.* 1°. While retaining the principal part in the administration of the property of his church the rector may have to assist him a board of trustees called also parish council or council of the church fabric composed of ecclesiastics or laymen.

(*a*) During the first centuries laymen had no share in the administration of church property. Some synods expressly exclude them from it. (Chalons, 644, Can. 5; Paris, 615, Can. 6.) An English synod held at Exeter in 1287 seems to have been the first one to admit them. In Germany we find lay administrators of the temporalities of the church in 1300. In France the council of Lavaur contains the first mention of parishioners chosen by the pastor to look after the temporal interests of the parish (1368).

(*b*) Laymen naturally wished to have something to do with the handling of funds largely contributed by them. The Bishops made them

that concession to attach them to their church, encourage their generosity, and enlist the co-operation of men often more versed in financial matters than ecclesiastics. It remained, however, a mere concession liable to revocation at any time. In fact it not infrequently became necessary to restrict or altogether withdraw it because of the encroachments of trustees or churchwardens who interfered even in spiritual matters and took upon themselves, for instance, to appoint preachers if not the pastor himself. (Gasquet, Parish Life in Medieval England. Chapter V.) Still the institution survived and to the present day in most Catholic countries parishes have their churchwardens or trustees.

(*c*) In the United States the abuses of trusteeism obliged the Baltimore Councils to adopt severe measures for the protection of pastoral rights and ecclesiastical discipline but they did not intend to exclude absolutely all lay participation in church affairs. (II Plen. C., n. 183, 198, 201, 202.) The Third Plenary Council advises pastors without obliging them to secure the assistance of prudent members of their flock in the administration of temporal things. (n. 285, 287.) In 1911 the Cong. of the Council recommended, wherever possible, to organize Parish Corporations as they exist in some dioceses, consisting of the Bishop, the Vicar General, the pastor, and two lay members of the parish elected for one year by the members *ex officio,* no act or proceedings of the trustees having any value without the consent of the Ordinary of the diocese. (A. E. R., 1911, Nov., p. 585, 590, 596.) In some states it has

proved difficult to obtain from the civil power recognition of such corporations.

2°. The present common law does not necessarily require special boards or parish councils for the temporal administration of particular churches but it rules that wherever they exist the pastor or rector should act as president, their members, except for a legitimate provision to the contrary, v. g. in a concordat, must be elected by the Ordinary of the diocese or his delegate who has also authority to remove them for grave reasons; they should look after the temporal affairs of the church in conformity with the regulations laid down for administrators of ecclesiastical property (Can. 1222, 1523) but they must not interfere with spiritual matters, particularly with the following:

(*a*) The exercise of divine worship in the church;

(*b*) The manner and time of ringing the bells and the maintaining of order in the church and cemetery;

(*c*) The methods adopted to obtain contributions, the announcements made in church, and anything which pertains to divine worship or the adornment of the church;

(*d*) The material disposition of the altars or communion table, pulpit, organ and organ loft, seats and pews, offering-boxes, and other things belonging to the exercises of divine worship;

(*e*) The approval or rejection of sacred utensils and other things destined either for use in the divine services or for the decoration of the church or sacristy;

(*f*) The writing, manner of keeping, or taking care of the parochial books and other documents belonging to the archives of the parish.

3. *Church Officials.* (Can. 1185.) Regularly the rector has full and exclusive power to appoint, command, and discharge such officials of the church as the sacristan or sexton, the singers, the organist, the choir boys, the bell-ringer, the grave diggers and others. He must, however, have due regard for legitimate customs, previous contracts or agreements, and the authority of the Ordinary to whom he remains subject in all the acts of his administration.

VIII. REPAIR OF CHURCHES. (Can. 1186.)

31. In some cases special stipulations, legitimately established custom or even the civil law with ecclesiastical approval or tacit consent may determine with whom rests the obligation of maintaining or repairing a church. It may be the founder or patron, a family, an institution. There may be special funds left or set aside for this purpose; in some countries the state assumes part at least of the expense.

Wherever such conditions exist the Code leaves them unchanged; in the absence of other provisions it gives the following rules:

1. The burden of the repair of cathedral churches devolves first on the fabric of the church, then on the Bishop and canons, and finally on the faithful of the diocese.

(*a*) If the church has no special funds for the maintaining and repairing of the sacred edifice it

must take from its ordinary revenues but only after defraying the current expenses particularly those demanded for the proper celebration of the divine service.

(*b*) Should these resources prove insufficient the Bishop and canons must contribute to the work in proportion to their income out of the superfluous revenues of their benefice, not out of their personal means or patrimony, after deduction of what they need for their decent maintenance.

(*c*) If necessary the faithful may be appealed to and they should contribute according to their means but the legislator recommends to use persuasion with them rather than coercion.

32. 2. In the same manner the obligation of repairing the parish church rests with the fabric of the church, the patron, the beneficiaries of the church, and the parishioners in the order indicated here.

(*a*) Here also the parish funds or ordinary revenues must serve first to meet current expenses and the surplus alone goes to the repairing of the church.

(*b*) Churches in the United States do not recognize any patrons.

(*c*) Persons deriving some income from the church whether they possess a benefice or simple office may be taxed according to the rate fixed by the Ordinary after deducting from their salary the expenses for their support.

(*d*) The parishioners ought to assist in the maintenance and repair of their church as far as needed and possible but whilst the Council of Trent authorized the Ordinary to compel com-

pliance with this duty the Code here again recommends persuasion in preference to coercion.

IX. REDUCTION OF CHURCHES TO PROFANE USES.

(Can. 1187.)

33. 1. When a church had become unfit for religious service the Council of Trent commanded to repair it if possible and if not to demolish it, and then only did it authorize the use of the materials for profane purposes. The Code does not require the destruction of a church dilapidated and beyond hope of repair; the Ordinary may turn it to some profane, becoming, not sordid use. He should then transfer to another church together with the funds or revenues of the old one, its liabilities or obligations such as foundation Masses, and if the latter was a parish church, the title which becomes the secondary one of the church thus inheriting it.

2. After reduction to profane use and consequent execration a church having lost its sacred character may become object of contract and, v.g. be sold; whether it might before execration, some canonists deny and others affirm. The second view seems to find support in the present law and more directly still in a recent decision of the Congregation of the Council. In 1918 the pastor of Ouchy, diocese of Lausanne, for very serious reasons and with the approval of his Ordinary asked for permission to mortgage his house and church. The Congregation allowed him to mortgage the house but not the church. As, however, this did not suffice to meet the difficulty the pastor and Ordinary renewed their petition and

this time obtained the needed authorization. Now canonists consider mortgage as a species of alienation or at least *via ad alienationem*. (Monitore Ecclesiastico, Ser. i, vol. 5, p. 172; Ser. iv, vol. ii, p. 231; Coronata, n. 63.)

TITLE X

ORATORIES

(Can. 1188–1196.)

(Many, Prælectiones de Locis Sacris, n. 65–107; Gasparri, De SS. Eucharistia, n. 187–279; Wernz, Jus Decretalium, iii, n. 449–460; Vermeersch, Epitome Juris Canonici, ii, n. 497–503; Cocchi, Commentarium in Codicem J. C., L. iii, n. 28–33; M. A. Coronata, De Locis et Temporibus Sacris, n. 69–97; Blat Commentarium textus Codicis J. C., n. 39–49.)

I. NATURE AND DIFFERENT KINDS (Can. 1188–1190.)

34. 1. *Nature.* The Code defines oratories in the present canonical sense of the term as places dedicated to divine worship like churches but not intended like the latter primarily for use by all the faithful in the public exercise of their religion.

2. *Different Kinds.* The ancient law explicitly recognized only two kinds of oratories, the public and the private ones. The present law sanctioning a discipline gradually introduced by custom and accepted by the Congregation of Rites chiefly since the decree of Jan. 23, 1899 (Decreta Authentica, n. 4007) admits a third kind, viz., the semi-public oratories.

1°. A public oratory as the name implies is one erected primarily for the convenience of a community or even private individuals but open at

least during religious services to all the faithful who have a well-established right to use it. Generally it has an entrance on the public street but this is not strictly necessary as long as the faithful have free access to it and no one may exclude them.

35. 2°. By a semi-public oratory is understood one opened not to the public generally, nor on the other hand exclusively to a private person or family but to a community or to a certain body of men so that others have no right to use it although they may be allowed to do so. Such are the chapels of colleges, seminaries, monasteries, religious communities, confraternities, hospitals, prisons, military posts, etc.

3°. Oratories are strictly private or domestic when erected in private homes for the convenience of a private person or of a family. This last term includes all the members of the household.

The oratories of Cardinals or of Bishops whether resident or titular although private in themselves enjoy by special disposition of law all the rights and privileges of semi-public oratories. (Can. 1189.)

Little chapels erected in cemeteries by private families or individuals for their own burial are private oratories.

II. LEGISLATION ON ORATORIES. (Can. 1191–1196.)

36. 1. *Public Oratories.* 1°. They are governed by the same laws as churches notably in regard to erection, blessing, or consecration, exclusive dedication to sacred purposes, right of asylum, execration, and violation.

2°. Once the Ordinary has dedicated them to divine worship by blessing or consecration it becomes lawful to hold therein all sacred functions except the strictly parochial ones or others excluded by rubrics such as solemn Holy Week services in a chapel which does not habitually have the B. Sacrament. (Coronata, n. 73.)

37. 2. *Semi-public Oratories.* 1°. Ordinaries may authorize the erection of semi-public oratories, taking the term Ordinary in its comprehensive sense as including not only the Bishop of the place but also the Vicar General, Administrators, superiors in religious orders.

Before granting this permission the Ordinary must, personally or through a delegate, ascertain the fitness of the edifice.

2°. The legislator implicitly permits (Can. 1196) the solemn blessing and even the consecration of semi-public oratories without prescribing either. Dedication to divine worship by the Ordinary with simple or even without any formal blessing suffices to set them apart as sacred places henceforth reserved exclusively for religious purposes.

Canonists generally declare it unlawful to have bedrooms immediately above them; they base their teaching, however, chiefly on decisions given for particular cases or applying to churches. It would be particularly unbecoming to have bedrooms immediately above the altar of the Blessed Sacrament unless there be a double partition or a canopy over the tabernacle. (Vermeersch, n. 501; Many, n. 87.)

3°. The dedication of semi-public chapels to divine worship does not have the same character

of permanency as that of churches and the Ordinary may more readily, for any just cause, turn them to profane purposes, but this always requires his intervention and if foreseen as probable would render solemn blessing and still more consecration inadvisable.

4°. Besides the principal oratory erected for general use in colleges, boarding-schools, barracks, hospitals, asylums, and similar institutions the Ordinary may authorize the erection of secondary ones if necessity or great utility warrants this permission. They too must be considered as semi-public chapels although they have not the same importance.

5. In legitimately established semi-public chapels all religious functions may be held unless rubrics or special episcopal rulings decide otherwise.

38. 3. *Private Oratories or Domestic Chapels.* (Can. 1194–1196; Many, n. 77–97; Coronata, n. 83–97.)

1°. Any Catholic may erect a chapel in his own house for the satisfaction of his piety but the Holy See alone can authorize the habitual celebration of Mass therein. Formerly local Ordinaries granted those permissions but on account of abuses the Council of Trent reserved them to the Pope and the Code has maintained this discipline.

The Pope grants them usually through the Congregation of Sacraments and the Secretariate of Briefs on recommendation from the petitioner's Bishop who must visit the Oratory and pass on its fitness.

2°. The Indult often specifies the extent and limitations of the concession; except for more

extensive clauses the privilege of the domestic chapel implies permission for the celebration of one Mass, a low Mass, daily, in presence of the petitioner or beneficiary of the favor, and for no other sacred function. Neither may Mass be celebrated on the greater Feasts of the year, Easter, Pentecost, Holy Thursday, and the Feasts of obligation. (Many, n. 88.)

All who assist at Mass in domestic chapels may now receive Holy Communion but the only ones who can fulfill therein the Sunday precept are the beneficiaries of the Indult, their relations who live with them, their noble guests and the servants whose presence might be actually needed like the Mass server.

39. 3°. For special, just, and reasonable causes the local Ordinary may permit not habitually but occasionally, *per modum actus,* the celebration of Mass on days excepted by the common law or the Indult.

He may likewise permit that celebration in oratories for which the Holy See has not granted any Indult, after he has ascertained their fitness, but only for one Mass, in some extraordinary case, for a just and reasonable cause, *per modum actus.* Some good canonists interpret these clauses as restricting the power of the Bishop to the authorization of one Mass daily as long as the exceptional conditions last and the just cause exists, not to one single Mass. (Coronata, n. 85, 86; cf. Many, n. 81, 82; Gasparri, 225; Com. Int., Oct. 16, 1919; Cong. Sac. March 22, 1915; Monitore Ecclesiastico, Ser. iv, vol. ii, p. 21; Ser. iv, vol. i, p. 175.)

In the private chapels built in cemeteries (Can.

1190) the Ordinary may authorize not only once in passing but habitually the celebration of several Masses on the same day.

4°. Domestic oratories may not be consecrated nor blessed like churches; they may receive the ordinary blessing for a place or new house given in the Ritual. This suffices to set them aside for religious use only, to the exclusion of any domestic purposes, although they have no sacred character properly speaking, they remain private property and do not enjoy the right of asylum. The Indult or the Ordinary may forbid to have bedrooms immediately above them although this prohibition of the common law does not apply to them. They must according to decrees of Congregations form a distinct room, separated from the rest of the house by a wall, not simply, for example, by a curtain.

TITLE XI

ALTARS

(Can. 1197–1202.)

(Gasparri, Tractatus Canonicus de SS. Eucharistia, n. 281–358; Wernz, Jus Decretalium, iii, n. 461–465; Many, Prælectiones de Locis Sacris, n. 108–136; Blat, Commentarium Textus C. J. C., n. 50–56; Vermeersch, Epitome Juris Canonici, ii, n. 504–509; Coronata, De Locis et Temporibus Sacris, n. 98–124; Martène, De Antiquis Ecclesiæ Ritibus, Lib. i, C. viii § 11; Catholic Encyclopædia, Altar; Dictionnaire d'Archéologie Chrétienne et de Liturgie, Autel; Bingham, Antiquities of the Christian Church, B. viii, c. vii, §11; Dictionary of Christian Antiquities, Altar.)

I. NATURE AND DIVISIONS. (Can. 1197.)

40. 1. In a church the altar as serving immediately for the most important act of worship occupies a central place. It consists essentially of a table upon which is offered the sacrifice and secondarily of the basis which supports it together with accessories which adorn or complete it.

2. In liturgical language an altar made up of a table and a solid basis consecrated with it is called a fixed or immovable altar. This does not imply necessarily impossibility of moving it but simply close connection between table and basis by common consecration so that separation would entail desecration.

When consecrated by itself the table, whether of large or small size, whether resting on a solid but not consecrated basis or movable from place to place, receives the name of portable, movable altar, or simply sacred, altar stone.

In a consecrated church there must be at least one fixed altar, generally the principal one. In a merely blessed church or chapel all altars may be portable ones.

II. STRUCTURE.

41. 1. *Material.* The first Christian altars like the one used by Our Lord at the Last Supper were in all probability ordinary tables made of wood. St. Optatus of Mileve in the fourth century and St. Augustine at the beginning of the fifth still refer to wooden altars. Meanwhile, however, other material had come into use. St. Gregory of Nyssa mentions the consecration of a stone altar. Historians relate that St. Helena gave golden altars to the church of the Holy Cross; Popes St. Sixtus III (d. 440) and St. Hilary (d. 468) presented several altars of silver to the churches of Rome. Stone, as more durable, not subject to decay like wood, nor to corrosion like common metals and less expensive than the precious ones, gradually supplanted all other material for altars, first by custom and for reasons of convenience, then by formal legislation beginning at least as early as the Council of Epaonne in 517 (Can. 26). The present discipline permits no other.

2. *Table.* In a fixed altar the table and in a portable altar the sacred stone must be one single piece of natural, solid stone, not easily crumbling,

without any fractures or crevices. Liturgical law admits any natural, hard stone such as marble, granite, travertine, slate, schist, but not gypsum, pumice, or artificial stone; nor does it permit the consecration of an altar made up of several parts even though so cemented together as to appear like one.

The table of fixed altars must extend over the whole length and breadth and not have, for example, a cornice of metal or wood around it, as the Congregation of Rites declared. (Aug. 29, 1885; Apr. 23, 1893.)

It must rest immediately on the basis or support and form one whole with it although not necessarily fastened physically or cemented together.

For fixed altars the law does not prescribe any special dimensions; the requirements of sacred ceremonies must determine their size. For altar stones it demands that they be large enough to receive the sacred Host and the greater part of the base of the chalice, which means about twelve by fourteen or fourteen by sixteen inches.

42. 3. *Basis or support of fixed altars.* The basis itself must regularly be of stone. It may consist of a solid stone wall, or of four walls upon which rests the table, the space between being filled with brick, cement, or stone or left free. Two walls may also suffice one at each end, the space between remaining open. The table may likewise rest on four or more columns; these must be of stone. The Congregation has permitted metal for the bases but always required stone for the shaft and specially the capitals. (May 24, 1901.)

4. *Sepulchre.* Fixed as well as movable altars must have an opening or cavity called sepulchre containing relics of saints as prescribed by rubrics and closed with a stone. Liturgical rules call for relics of canonized saints, preferably if not necessarily, of martyrs. (Gasparri, n. 325, 327.)

In the early Church Holy Mass was frequently celebrated on the tomb of martyrs. The close connection thus established between the Holy Sacrifice and the relics of saints led to the practice of securing some of them, whenever possible, for every new church or altar. This became afterwards a general law.

III. CONSECRATION. (Can. 1199.)

43. 1. *Necessity.* Ecclesiastical law does not permit the celebration of Mass on an altar till it has received consecration in the form prescribed by the Roman Pontifical.

In a fixed altar the table and basis or support are consecrated together; consecration of a movable altar means consecration of the sacred stone.

2. *Minister.* All Bishops, whether titular or residential, and by special privilege Cardinals, Vicars, and Prefects Apostolic or during a vacancy pro-Vicars and pro-Prefects, Abbots, and Prelates *nullius* have power to consecrate portable altars. Those among them who do not possess the episcopal character must use oil blessed by a Bishop.

The consecration of fixed altars follows the same rules as that of churches or sacred places in general and belongs to the local Ordinary if he has the episcopal character. If he has not he may delegate a Bishop for this purpose. Cardi-

nals although not endowed with the episcopal character and Abbots or Prelates *nullius* may consecrate fixed altars with oil blessed by the Bishop. (Can. 239, 200; 323 § 2.)

3. *Time.* The consecration of an altar apart from that of the church may take place any day but Sundays and Holy days of obligation are preferable.

IV. EXECRATION. (Can. 1200.)

44. 1. Fixed or immovable altars lose their consecration by removal or separation of the table from its basis or support even only momentarily and for whatever reason, but not by removal of the whole altar from one place to another nor by alterations in details as long as the table and support remain united.

In cases of loss of consecration in this manner the Ordinary has now power to delegate a priest for the reconsecration of the altar with a shorter rite and formula approved by the Congregation of Rites. (Sept. 9, 1920.)

2. Portable as well as fixed altars lose their consecration:

(*a*) By a fracture considered as "enormous" by reason either of its extent or of the anointed place in which it occurs. If the use of the altar or sacred stone is rendered impossible or none of the pieces can receive the sacred Host and chalice the fracture is certainly "enormous." Many canonists consider such also the breaking off of a corner bearing one of the consecration crosses;

(*b*) By removal of the relics and by removal or fracture of the lid or stone covering the sepulchre. If, however, the Bishop himself or

his delegate would remove the cover for the purpose of fastening, repairing or replacing it, or for the purpose of inspecting the relics this would not induce execration; nor would a slight fracture have that effect but any priest might fill up the crack with cement.

(*c*) Execration of a church does not involve execration of either its immovable or movable altars, nor does execration of the altars affect the church.

V. TITLE.

45. 1. Each altar, at least each fixed altar should, like the church, have its own title. Portable altars may have one also but the law does not strictly require it.

2. The principal title of the main altar should be the same as that of the church. This supposes that an altar may have several titles, a primary one and secondary ones. Regularly, however, it should be dedicated to only one saint or mystery.

3. The Ordinary may give permission to change the title of a movable but not that of an immovable altar.

4. The rules for the choice of titles is the same for altars as for churches. They may be dedicated to mysteries or saints that form the legitimate object of public devotion but not to the blessed even in the churches or chapels in which their Mass or office may be said, except by special Apostolic Indult.

VI. USE OF ALTARS.

46. 1. Portable as well as fixed altars should be strictly reserved for divine service to the ex-

clusion of any profane use; they must not, for example, serve as store-rooms.

2. No corpse or body of person not canonized or beatified should be buried under the altar. Should one have been buried near it, unless the distance of at least one metre intervenes, Mass may not be said on that altar without removal of the body. In some cases the Congregation of Rites has dispensed from the removal if it offered serious difficulty. (Apr. 2, 1875.)

Recent decrees less severe than ancient ones permit to measure the distance of one metre from the altar table or stone, not necessarily from the predella. (Many, n. 142; Coronata, n. 93.)

Separation by a stone chamber would make up for insufficient distance; nor does this law forbid burial in the crypt of the church beneath the altar, nor under the floor of the altar at the proper distance from the table.

TITLE XII

ECCLESIASTICAL BURIAL

(Can. 1203–1242.)

(Many, Prælectiones, De Locis Sacris, n. 137; Wernz, Jus Decretalium, iii, n. 466, 773; Thomassin, Ancienne et Nouvelle Discipline de l'Eglise, P. iii, L. i, c. 65–68; Martène, De Antiquis Ecclesiæ Ritibus, L. iii, c. 12–15; Catholic Encyclopædia, Burial, Cemetery, Cremation; Dictionnaire d'Apologétique, Incinération; Dictionnaire de Théologie Catholique, Crémation; Dictionnaire d'Archéologie Chrétienne et de Liturgie, Area, Catacombes, Cimetières; Bingham, Christian Antiquities, B. xxiii; Dictionary of Christian Antiquities, Cemetery, Churchyard; Vermeersch, Epitome Juris Canonici, ii, n. 510; Cocchi, Commentarium, n. 45; Blat, Commentarium, n. 57; Coronata, De Locis et Temporibus Sacris, n. 125; H. Tondini; De Ecclesia funerante ad normam novi codicis, 1927; Periodica, Aug. 1927, p. 57.)

PRELIMINARY NOTIONS. (Can. 1203, 1204.)

I. ANCIENT DISCIPLINE.

47. 1. From the beginning Christians showed their respect for the dead by the great care they took to bury them even in times of persecution and by the aversion they manifested for the practice of cremation then in vogue among the Greeks and Romans. They designated as cemeteries or dormitories the places where they laid their

brethren to rest till the awakening of the Resurrection. With them burials assumed the character of religious ceremonies and as soon as they could they possessed cemeteries exclusively their own. St. Cyprian (257) severely reproves a Bishop for his association with a heathen funeral college.

Roman law did not permit burials within the limits of cities, and the first Christians respected its prescriptions but in the fourth and fifth centuries exceptions became quite frequent and a Council of Bracara in 563 formally authorized burials around the walls of churches. Nor did the concession fully satisfy popular piety. Emperor Constantine had been buried in the vestibule of the church of the Apostles and some of his successors within the church itself; then some Bishops had obtained the same privilege. This increased in others the desire of having their last resting place in sacred edifices where the faithful came to pray and near the tombs of martyrs or the relics of saints. For several centuries Councils maintained their opposition to burials in churches but gradually they yielded to popular demand; in the ninth century they admitted numerous exceptions in favor of Bishops, Abbots, priests, great benefactors, and persons of extraordinary merit. In the twelfth all restrictions had practically ceased. (5, 6, X, III, 28.) Because of the inconveniences which this system offered efforts were made in some places to restore the former discipline. The Roman Ritual recommends to retain the ancient custom of burying the dead in cemeteries wherever it exists and to bring it back if possible where it does not but no change

was made in the general legislation till the publication of the Code.

48. 2. With the multiplication of burials in churches and monasteries arose abuses which Popes and synods frequently protest against at this time. St. Gregory condemns the practice of exacting some compensation for the privilege of burial in the church or for the funeral service. At most does he allow free offerings by the family for the lights or other expenses. (12, C, XIII, q. 2.) Some Councils speak still more severely and reprove all forms of funeral fees as savoring of simony. People continued more or less spontaneously to make offerings till by custom these had become obligatory and recognized as such by the supreme ecclesiastical authority (1205) not, however, as a condition for the granting of Christian burial. (Thomassin, l.c.)

49. 3. The Councils had then to legislate on the distribution of these fees and settle disputes to which they gave occasion between pastors and principally between seculars and regulars.

From very ancient times monasteries had their own burying grounds for the members of the community; later on they admitted outsiders also. This synods permitted or even advised (Tribur, 811, Can. 15) and it did not cause friction as long as burials remained entirely gratuitous. When the secular clergy objected Popes generally supported the monks. St. Gregory the Great writes to the Bishop of Orvieto not to let any one interfere with the faithful who desire to have their tomb in the monastery of St. George (600). Several centuries later Pope Innocent III (1210) finds it necessary to affirm the right of every

Christian to choose his burial place where he wishes even in monasteries in order to have a share in the prayers of the religious. (3, X, III, 28.)

Care was taken at the same time to protect the prerogatives of parish priests. A Decretal inserted in the Corpus Juris under the name of Pope Leo (2, X, III, 28) blames certain Abbots and monks who try to sow discord in the Church and prompted not by zeal but by love of money strive to seduce lay people that they may elect the monastery for their burial and leave thereto their possessions to the detriment of the parish churches in which these persons have received spiritual ministrations during life. This he pronounces an intolerable injustice and he ordains that when a person retires into a monastery or is buried therein, one half of what he disposes of for the good of his soul must go to his parish church. Alexander III makes a distinction: if a person retires into a monastery when already afflicted with the sickness from which he will die the canonical portion of what he leaves must go to his parish church; if he had retired in good health nothing is due to his pastor. (4, X, III, 28, De Sepulturis.) The canonical portion meant in some places the third, in others and more commonly the fourth, part of the funeral fees, hence the name of *quarta funerum*.

Not only monasteries had to pay it but pastors also and anyone who legitimately buried a person belonging to another's parish. The legitimacy of such burial required proof that the deceased had chosen that place or that he had there his family tomb. When either of these reasons

existed the pastor had no right to interfere. The Abbot and monks of St. Martin's monastery having complained to Alexander III that whilst one of their priests proceeded to the burial of a woman in their church according to her expressed will the monks of St. Vincent's Monastery came, took the corpse by force and buried it in their own church; the Pope condemned the monks of St. Vincent to give back the corpse and all the *funeralia.* (6, X, III, 28.)

II. BURIAL AND CREMATION.

50. 1. Among the ancient peoples some burned their dead others buried them. At the beginning of the Christian Era cremation had become very common in Greece and Rome. The Jews ever used inhumation exclusively and from the earliest days the Christians adopted the same practice as St. Paul implies (I Cor. xv, 36) and such early writers testify as Tertullian (De Anima, c. 1) and Minucius Felix (Octavius, 11). When the Barbarians came into the Church they had to accept the same rule and abandon all contrary customs. A Council of Paderborn in Saxony (785, Can. 7) threatens with death those who would attempt to retain the pagan practice of cremation. The legislation of the Church has not varied on this point nor permitted any departures except in some extraordinary cases.

During the Middle Ages in order to facilitate the transportation of bodies for burial in distant lands some ventured at one time to employ a special process which consisted in disembowelling the body and boiling it to separate the flesh from the bones. On learning of this Boniface VIII

(Feb. 1, 1300) pronounced it an abomination before God and horrifying to the minds of the faithful and he decreed that those taking part in such enormities would incur *ipso facto* an excommunication reserved to the Holy See; bodies thus treated would be refused Christian burial. (Ext. Com., vi, 1.)

When in modern times efforts were made to revive the old practice of cremation the Holy See directly or indirectly condemned it on several occasions. On May 19, 1886 the Holy Inquisition declared it unlawful for anyone to join societies that promoted cremation or to demand the cremation of one's own or someone else's body. Another decree (Dec. 15, 1886) deprives of Christian burial those who have demanded cremation for their own body and certainly and notoriously persevered in their disposition to the end. On July 27, 1892 and on June 19, 1926 the Holy Office again decreed against the same offenders refusal of the last sacraments, of Christian burial and public Masses for the repose of their soul after death; it forbade also formal cooperation in cremation and tolerated material cooperation only on condition that it would not have any anti-Catholic character. (Dictionnaire de Théologie, xxv, p. 2320.)

According to an answer of the Holy Office of Aug. 3, 1897 even amputated limbs should be buried, when convenient, in a small consecrated lot. If, however, doctors would prescribe cremation it would be permitted silently to comply with their demand. (Coll. P. F., II, p. 1975.)

51. 2. In accordance with ancient tradition the Code commands inhumation and expressly re-

proves cremation. This law evidently admits of exceptions in extraordinary cases as in times of pestilence or war when cremation might become a necessity. In the war of 1914–1918 it was not made use of apparently because of the aversion soldiers and their families felt for it.

Burial does not necessarily imply interment or placing in the earth as it is permitted at least by custom to build tombs above ground in cemeteries and to deposit the bodies in vaults.

The law does not allow the carrying out of a request for cremation in whatever form made and it declares the same null and of no effect when added to a contract, a last will, or other act.

III. CHRISTIAN BURIAL.

52. A Christian burial consists of three elements, the transfer of the body to the church, the service over the body in the church, and the interment in a place destined for the burial of the faithful.

Exclusion from Christian burial implies refusal of all these rites and a complete funeral as prescribed by the Roman Ritual requires the three of them. The Congregation of Rites reproved as an abuse the custom existing in some places of suppressing the transfer of the body to the church.

To each one of these three elements may correspond a distinct right: the right of accompanying the body to church or right of "association," the right of funeral proper, and the right of burial. One church might have the right of performing the funeral rites in church and another that of burying the body in its own cemetery.

CHAPTER I

PLACE OF BURIAL OR CEMETERIES

(Can. 1205–1214.)

I. BURIAL IN CEMETERIES OR CHURCHES. (Can. 1205.)

53. 1. The faithful ought to be buried in consecrated ground, that is, ordinarily in the cemeteries set aside for this purpose and sanctified with simple or solemn blessing by the Bishop or a priest in the form prescribed by the Roman Pontifical or Ritual and in accordance with the rules above laid down for the consecration of sacred places. (Can. 1155, 1156.)

The custom of blessing cemeteries goes back to the sixth century at least and the whole Christian tradition stands against promiscuous interment of members of the Church with outsiders unless circumstances render this unavoidable. The first Plenary Council of Baltimore (1853) decided to refuse all funeral rites to Catholics who chose for their burial place a non-Catholic, when they could have it in a Catholic, cemetery. The second (n. 392) and the third Plenary Councils, however, considering the special conditions of the country at the time and wishing to avoid greater evils consented to make an exception in

favor of converts whose non-Catholic family had a plot in a non-Catholic cemetery and of Catholics who possessed a family vault in a non-Catholic cemetery before the promulgation of the decree of 1853 or had acquired it since but in good faith; they permitted in such cases burial in the non-Catholic cemetery with a funeral service in the house or in church and blessing of the individual grave each time at the moment and in the manner deemed most opportune. (Eccl. Rev., 1890, p. 465.) The concession, as the Holy Office explicitly declared afterwards, holds only when those special circumstances and grave reasons exist. (Jan. 1, 1888; Genicot, Theologia Moralis, ii, n. 627.)

2. The common law no longer permits interments in churches except for residential Bishops, Abbots, and Prelates *nullius* who may and regularly should be buried in their own church, for members of royal families, Cardinals, and the Pope.

In churches the graves should be even with or under the floor although the funeral monument may stand above. The Sovereign Pontiff alone may have his grave above the church floor. As said above, the body should lie at least one metre from the altar and not under it unless a stone work separates the two. (Can. 1202.)

II. RIGHT OF THE CHURCH TO HAVE CEMETERIES.

(Can. 1206.)

54. 1. Because of the sacred character of burials among Christians the Church has a strict and independent right to possess her own cemeteries and

govern them according to her laws. The civil power may, however, enact rules concerning circumstances and details which may affect public health or other interests such as the locality of cemeteries, the depth of the graves, the time that should intervene between death and interment. (Many, n. 226.)

2. In some countries the State disregarding the rights of the Church claims the ownership of all cemeteries and permits in them the burial of all classes of people without distinction, believers and infidels.

When such conditions exist without hope of change in the near future, if the majority of persons buried in the cemetery belong to the flock the Bishop ought to have the whole cemetery blessed in spite of the probable burial in it of heretics or infidels. Under such circumstances the Church seems to accept this inconvenience rather than have the cemetery divided and only one portion of it assigned to Catholics.

If the Catholics are not the majority they should endeavor to obtain for their exclusive use a portion which would then be given the usual blessing.

Should they fail to secure even that much only the individual graves may be blessed in each particular case with the formula given in the Ritual. (Tit. vi, c. 3, n. 12.)

III. INTERDICT, VIOLATION, RECONCILIATION, AND EXECRATION OF CEMETERIES. (Can. 1207.)

55. The rules concerning churches apply also to cemeteries in this matter. A local general interdict does not prevent in cathedral or parish

churches a simple funeral service without any solemnity, singing, or music; nor does an interdict placed on the cemetery exclude it. (Can. 2271, 2272.)

As said before, violation of the church does not of itself any longer entail violation of the cemetery also; it requires a distinct act. (Can. 1172.)

Cemeteries can rarely become execrated or lose their blessing like churches by total destruction but they, no doubt, lose it if the Bishop after transfer of the bodies to some other place reduces the cemetery to profane use as he may do for it as well as for the church.

IV. RIGHT OF BURIAL. (Can. 1208.)

56. 1. Every parish may or even should if possible have its own cemetery unless the Ordinary has appointed a common cemetery for several parishes, which he may do for any reasonable cause as the present Canon implies.

Parish here clearly includes as under the former discipline quasi-parishes, independent missions and stations having their own priest to minister to their spiritual needs.

2. Exempt religious have likewise a right to a cemetery of their own distinct from the common cemetery of the faithful.

The present law does not distinguish in this matter between religious with simple or solemn vows, clerical or non clerical; it recognizes the same right to all who enjoy exemption; others may obtain it by special privilege.

3. The local Ordinary may also grant to other moral bodies such as fraternities or even to private families a special burial place outside of

the common cemetery and blessed like a cemetery.

V. SPECIAL BURIAL PLACES IN CEMETERIES.

(Can. 1209.)

57. 1. The faithful may secure or prepare for themselves or their family special burial places both in parochial cemeteries and in those belonging to other moral persons. In the first case they need the written permission of the Bishop or his delegate, the pastor's would not suffice; in the second the superior or the head of the moral body gives the authorization. With the consent of the Bishop or of the superior these sepulchres or tombs may be alienated. Purchase of lot in Catholic cemetery does not give right to bury therein non-Catholic relatives, etc.

Decretal law strictly forbade exacting anything as a price for a common grave in a consecrated cemetery (13, X, III, 28); this, according to common interpretation, did not exclude some compensation for the upkeep of the cemetery and other expenses, still less for the exclusive use of a particular lot or of a more desirable place. The second Plenary Council of Baltimore (n. 393) allows charges for family plots the proceeds to go to the upkeep and improvement of the cemetery and the balance to pious works as directed by the Ordinary. (Many, n. 152.)

When private persons alienate a lot or vault duly obtained or constructed by them they too may, no doubt, demand a compensation.

For these transactions the present law does not

prescribe the formalities required for ordinary alienations of ecclesiastical property. (Coronata, n, 139.)

2. Whenever possible priests and clerics should have a distinct burial place separated from that of the laity, in a more desirable part of the cemetery. Moreover when it can be done without inconvenience a place should be set apart for priests and another for inferior clerics.

3. The bodies of infants should likewise be buried in distinct graves and in a plot separated from that of adults if it can conveniently be arranged.

VI. CARE OF CEMETERIES. (Can. 1210–1211.)

58. Those responsible for cemeteries must show and secure for them the respect which their religious character calls for:

1. They should have them properly enclosed and carefully guarded against any profanation or impropriety;

2. They should not allow in the epitaphs, the eulogistic inscriptions, or the ornaments of the tombs anything out of harmony with Christian faith or piety.

VII. SPECIAL BURIAL PLACE OUTSIDE OF CONSECRATED GROUND. (Can. 1212.)

The Church wishes to provide a becoming burial place even for those to whom she has to refuse the Christian rites; hence the suggestion of the legislator that wherever possible a separate plot well enclosed also and protected, ordinarily

outside of the cemetery, be set aside for the interment of these persons. A portion of the cemetery might serve for this purpose provided it be not blessed.

VIII. PREMATURE INHUMATION AND EXHUMATION.

(Can. 1213–1214.)

59. 1. Often the civil power requires a certain interval between death and burial and all should conform to its reasonable prescriptions in this matter.

Without determining any time the ecclesiastical and also the natural law demand such delay as to preclude all danger particularly in cases of sudden deaths, of burying one still alive.

Good medical authorities give as the only sure sign of death the beginning of decomposition. They recommend special caution in cases of sudden death because, they affirm, experience shows that in such cases particularly life may continue in the body for several hours and even days after all apparent manifestations thereof have ceased. (J. Antonelli, Medicina Pastoralis, Vol. II, n. 553, 610.)

2. The Ordinary alone, Bishop or religious superior, can authorize the exhumation of a body buried permanently with the Christian rites. This rule does not apply to removal from a temporary grave.

Courts ask at times for the exhumation of a body for the purpose of judicial investigation. Regularly they should apply to the Ordinary for permission even if the cemetery belongs legally to the State because tombs retain their religious and

sacred character independently of any question of ownership.

The Ordinary readily grants these requests whenever made for a reasonable cause. He must refuse them if there is no means of identifying the corpse with moral certainty and distinguishing it from other bodies.

CHAPTER II

CHRISTIAN BURIAL

[TRANSFER OF THE BODY TO CHURCH, SERVICE OVER THE BODY, ENTOMBMENT.] (CAN. 1215–1238.)

I. NECESSITY OF BURIAL SERVICES. (Can. 1215.)

60. 1. Christian burial as said before and implied by the heading of this chapter consists of three parts: the transfer of the body to the church with the prescribed prayers and ceremonies, the service over the body in church and the conveying of the body to the cemetery, and interment in consecrated ground with the prayers of the Liturgy.

2. Only a grave reason would dispense from bringing the body to the church and from holding over it the funeral rites as contained in liturgical books. In the Roman Ritual (Tit. vi, c. 3) this part of the service in church includes the Office of the dead, Matins and Lauds, Mass if the hour permits, and Absolution. Lack of time or other reasonable causes may permit the omission of the Office of the dead and even, although not so readily, Mass, but the other prayers always remain obligatory.

3. As decreed in a subsequent Canon (1231) after the obsequies in church the body ought to

be accompanied to the cemetery and buried with the prescribed rites, ordinarily by the priest who officiated at the obsequies or one delegated by him.

II. PLACE OF FUNERAL. (Can. 1216–1229.)

61. Place of funeral here means the place of obsequies and of interment, the funeral church and the cemetery. Usually one implies or corresponds to the other; regularly a person is buried in the cemetery connected with the church in which was held the funeral service but one may also choose a certain church for the funeral and a cemetery which has no connection with it for the burial; interment in a certain cemetery does not of itself involve obsequies in the church to which it belongs. (Can. 1230 § 7.)

The regular place for a person's obsequies is his parish church unless he has chosen another and unless also the place of interment determines otherwise the church for the funeral service.

The regular place for a person's entombment is his parish cemetery unless he has chosen another or he has a family tomb.

1. *Parish Church.* (Can. 1216–1219.) 1°. The common law commands to bring the remains of a deceased Catholic for the funeral service to his parish church unless he has chosen another one; if he belongs to several parishes by reason of different domiciles, quasi-domiciles (Can. 94) or personal connections the place of death decides the place of the funeral.

This right of the parish church has the presumption of law in its favor and in case of doubt prevails over others.

2°. Even when the death occurs outside of the parish the funeral should still be held in the parish church and if the deceased belongs to several parishes in the nearest one provided the distance does not render the transfer of the body too inconvenient.

The Code considers here only the inconveniences entailed by a journey on foot or a funeral procession from the place of death to the church and it leaves it to each Ordinary to determine in his own territory according to local conditions such as roads, climate, etc. what distance would offer serious difficulties so as to render such a journey on foot too inconvenient and thus dispense from the transfer of the body even though other and easy means of transportation would exist. (Vermeersch, n. 529; Coronata, n. 168.)

62. 2. *Funeral Church for Certain Classes of Persons.* (Can. 1219–1222.) 1°. The Pope. The Code contains no provision for his funeral; ordinarily his solemn obsequies are held in the Vatican Basilica in which also he has his burial place unless he has chosen another one.

2°. *Cardinals.* When Cardinals of the Curia die in Rome the Pope appoints a church for their funeral; if they die outside of Rome their body is taken for the funeral service to the most important church of the place or city.

Regularly they are buried in their titular church but they may choose the place for their sepulchre as also the funeral church.

3°. Residential Bishops even though members of the Sacred College, Abbots, and Prelates *nullius* should be taken for their funeral to their cathedral, abbatial, or prelatial church if cir-

cumstances permit and if not to the principal church of the place in which they died. In both cases if they had chosen another church it would have the preference.

They may or even should be buried in their church unless they have decided otherwise or distance does not permit.

These rules seem to apply to Vicars and Prefects Apostolic (Can. 294); titular Bishops follow the common law.

4°. Ecclesiastics who possess a residential benefice such as pastors and canons with a prebend are buried from the church in which they have a benefice if they have not chosen another and circumstances do not prevent the transfer.

Other ecclesiastics come under the same laws as the faithful.

63. 5°. *Religious.* (Can. 1221, 1222.) (*a*) Professed religious should be buried from the church or chapel of the house to which they belong or at least from a church of their order unless they have died at too great a distance and the superiors do not wish to transfer the body. In this case they have their funeral service in the parish church of the place in which they died.

The Code does not distinguish here between religious with simple or solemn, temporary or perpetual vows, exempt or not exempt in other matters, lay or clerical; it gives the same rule for all. Some canonists, because of its comprehensive character, apply it even to nuns and sisters, at least those who enjoy exemption from parochial jurisdiction. (Can. 490; 1230 § 5; Coronata, n. 177.)

(*b*) Novices follow the same rule as professed

religious except that they retain the privilege of choosing the church of their funeral. If they do their superior has still the right of removing the body, *levandi cadaver,* and accompanying it to the church.

(*c*) Domestics actually in the service of religious and residing within the enclosure of the monastery or institution as boarders come under the same law as novices if they die in the house. If they die outside they follow the common rule.

(*d*) Persons who have lived in a religious house or a college as guests, students, or patients come after their death under the common law except for some special particular legislation or privilege.

64. 6°. *Patients in Hospitals.* The common law applies to them unless the hospital has obtained by special concession or custom the right of burying its inmates.

7°. *Seminary Communities.* Unless the Holy See in particular cases provides otherwise seminaries enjoy exemption from parochial jurisdiction and the rector or his delegate fills the office of pastor for all who live in the seminary in all matters except marriage.

His authority extends not only to the students but also to the teachers, the servants, the sisters who may live in the seminary and in general to all who reside therein for whatever purpose. When one of these persons dies he should be buried from the seminary church or chapel unless he has chosen another. (Can. 1222, 1368; Coronata, n. 185.)

65. 3. *Elective Church and Cemetery.* (Can. 1223–1228.) 1°. *General Rule:* Every Cath-

olic may, unless expressly forbidden by law, freely choose his funeral church and place of burial. Although normally one implies the other a person may ask to have his funeral service in one church and his tomb in a cemetery belonging to another.

The right to make that choice does not pass to the heirs or to the members of the family except by delegation (Many, n. 191), unless possibly a custom dating from time immemorial and which the Ordinary would not deem advisable to abrogate would recognize that right to them. (Coronata, n. 170, 186.)

Married women and children who have reached the age of puberty do not depend in this matter on their husbands or parents.

2°. *Exceptions.* The common law denies this right of election to the following persons: (*a*) Children who have not reached the age of puberty, that is, boys under fourteen and girls under twelve. The right may be exercised for them even after their death by their parents, that is, first the father then the mother and the grandparents or by their guardians.

(*b*) Professed religious whether with solemn or simple, temporary or perpetual vows since the law makes no distinction, whatever their dignity unless they have the episcopal character or belong to the Sacred College of Cardinals.

Profession annuls the choice of the place of burial made before. By perpetual secularization, expulsion or dismissal a religious regains his freedom in regard to funeral also but not by apostasy or flight from regular life.

66. 3°. *Churches That May Be Chosen.* (Can. 1225.) All churches have not the right to hold

funeral services but only parish churches, churches belonging to regulars, churches of patronage in favor of the patron and other churches or chapels that have obtained the right by special concession from the Ordinary or the Holy See or by custom or prescription. The validity of the election requires that it fall on one of those churches.

Originally parish churches alone enjoyed the right of burying the dead, *jus funerandi*. In the thirteenth century the Popes granted it to the Friars Preachers and to the Friars Minor then all the regulars shared in it by the communication of privileges; but even now it does not extend to religious with simple vows even though exempt. These may bury from their church or chapel members of the community, their novices and domestics but no other persons except by special privilege or concession.

In the church or chapel of nuns or sisters with solemn vows may not be held funeral services for outsiders except, if they have made the request, for female servants and other women who live habitually within the enclosure of the convent as pupils, patients, or guests. The chapels of sisters with simple vows do not admit of any funeral services.

The Bishop may for a reasonable cause grant to any public or semi-public chapel the right of holding funeral services. This right, however, does not of itself authorize the rector of the church or chaplain to perform the service himself; this requires a special concession otherwise the pastor of the place would retain the privilege of officiating in the chapel.

The funeral service does not necessarily sup-

pose the presence of the body in the church or chapel.

67. 4°. *Mode and Proof of the Choice.* (Can. 1226.) A person may choose his funeral church or his place of burial either personally or through another duly commissioned for this purpose.

As such choice involves a limitation of parochial rights it must not be presumed but requires proof. Any legal evidence such as the testimony of two reliable witnesses or of a qualified one like the pastor provided he has no personal interest in the matter will suffice for this.

The proxy must prove his commission in the same manner, then he may carry out his mandate even after the death of the one he represents.

5°. *Freedom of the Choice.* (Can. 1227.) In order to protect it the legislator strictly forbids all religious and secular clerics to exercise pressure on any persons by means of advice, threats, importune requests or otherwise so that they bind themselves by vow, oath, solemn or simple promise to choose the church or cemetery of these clerics or religious for their funeral or burial, or if they have made the choice already not to change it.

This prohibition concerns all ecclesiastics, therefore pastors also and all religious including nuns, but not lay people.

It condemns pressure which results in a limitation of the liberty of the person concerned but not suggestions, counsels, or requests which leave his freedom intact as he does not assume any obligation. Nor does it forbid clerics or religious to use their influence in favor of churches or cemeteries other than their own.

The present law retains as only sanction the nullity of the choice made under those unlawful conditions.

6°. *Effect of the Choice of the Burial Place.* (Can. 1228.) (*a*) When a person has chosen for his burial place a cemetery distinct from the one belonging to his parish church his request ought to be carried out provided the authorities in charge of the cemetery have no reasonable objection to it. They should not without cause refuse permission for the burial but if they do the obligation of complying with the demand of the deceased binds no more.

(*b*) For burial in cemeteries of religious the permission of the proper superior is needed and it suffices without the consent, for example, of the local pastor. The Constitutions determine usually which superior must give the authorization; if they do not the local superior will have power to grant it. This concession in this case seems to depend entirely on the good will of the religious.

68. 4. *Ancestral or Family Tombs.* (Can. 1229.) Canonists distinguish three kinds of family graves or plots, those reserved to the family, those intended for the heirs and called hereditary and the mixed ones which may serve for both the family and heirs. The Code speaks only of ancestral tombs but apparently includes these three kinds under this name; it allows the faithful to erect or acquire in public or private cemeteries with the written approval of the Ordinary or superior (Can. 1209) sepulchres or lots for the exclusive burial of their family. When thus canonically established these become real

family graves. The deed of foundation should specify their exact nature and destination and the church on which they depend. (Many, n. 166.)

(*a*) A person who possesses a family grave in some cemetery ought to be buried there unless distance does not permit or he has chosen another place. The family tomb has the preference over the parochial but not over the elective one. (Coronata, n. 202, e.)

In such cases the funeral service takes place in the parish church unless the deceased had chosen another explicitly or implicitly. (Periodica, Aug. 1927, p. 66; Tondini o. c.)

The relations or heirs wish at times to take the body to a grave owned by them but which for want of canonical erection does not possess the privilege of family tombs; the law may tolerate this but the church of domicile retains then the right of performing the funeral service.

(*b*) A wife should be buried in the tomb of her husband, whether ancestral, elective, or parochial. If she had several husbands she ought to be buried in the tomb of the last one.

The rule does not apply after legitimate separation or when one of the parties is a non-Catholic and as said before a married woman remains free to choose her funeral and burial place.

Some canonists would have the husband buried in the tomb of the wife if he has not chosen one but this implies a further restriction of parochial rights which should not be admitted without positive proof.

(*c*) When there are several family tombs or when a husband has several the relations or heirs of the deceased may choose the one they prefer.

III. FUNERAL SERVICE AND OFFICIATING MINISTER.

(Can. 1230.)

69. The place of death and funeral and the quality of the deceased regularly determine the minister who has the right and duty of performing the ceremony but particular Indults, privileges, custom, and special agreements have introduced many exceptions to the general rules. Here it will suffice to give the prescriptions of the common law.

1. *Funeral in the Parish Church of the Faithful Who Died in the Parish.* It is the right and duty of the pastor except for some grave reason, personally or through another to accompany the corpse from the house to the church and there hold the obsequies.

If the deceased belongs to several parishes the pastor of the one in which he dies buries him.

In the United States, owing to special conditions, the custom has prevailed for priests not to go to the house of the deceased to accompany the body to the church.

70. 2. *Funeral in the Parish Church of the Faithful Who Died in Another Parish.* If distance does not prevent bringing the body to the parish church, the pastor has the same right and duty as in the preceding case but he must give warning to the pastor of the place from which he has to take his deceased parishioner to carry him to his own church.

These same rules apply with accidental modifications to the funeral of the members of seminary communities or of religious communities

of men for whom the superior takes the place of the pastor.

3. *Funeral in a Church Belonging to Regulars or Otherwise Enjoying Exemption from Parochial Jurisdiction.* The pastor of the place accompanies the body from the house to the funeral church under the processional Cross of that church the rector of which holds the obsequies, not the parish priest.

71. 4. *Funeral in Non-exempt Church.* Except for a special privilege the pastor of the place in which the church is located conducts the funeral service provided the deceased be his subject, otherwise this right would belong to the rector of the church.

5. *Funeral of Nuns or Sisters.* (*a*) When a nun, sister, or novice dies in the religious house the other sisters must bring her body to the door of the enclosure for the funeral, then in the case of exempt religious the chaplain accompanies it to the church or chapel where he performs the funeral service.

(*b*) If the religious do not enjoy exemption the pastor conducts the service as for his other parishioners.

(*c*) When a religious dies outside of the convent her funeral is governed by the general prescriptions of law which some interpret to mean the rules concerning the ordinary faithful and others those which pertain to the funeral of male religious; this would mean that, if convenient, her body should be taken to the church or chapel of her community for the obsequies and if circumstances do not permit this the general law would apply. (Coronata, n. 177, 212.)

6. *Funeral of Cardinals and Bishops.* When they die outside of Rome the Dignities of the cathedral chapter in an episcopal city must hold the funeral service; in other cities this duty devolves on the pastor of the principal church.

7. *Funeral of a Person Taken for Interment to a Place in Which He Has Neither Domicile nor Quasi-domicile and in Which He Has not Chosen any Church for his Funeral.* The obsequies if there are any services distinct from burial proper should be held in the cathedral church or, outside of the episcopal city, in the church of the parish connected with the cemetery in which the party has his tomb, unless diocesan statutes or custom rule otherwise. (Can. 1230, 7.)

IV. BURIAL. (Can. 1231–1232.)

72. 1. After the funeral service in church must follow the burial with the prayers and ceremonies prescribed by the Ritual. It takes place in the cemetery of the funeral church ordinarily unless the deceased has his family or elective tomb elsewhere.

2. Regularly the priest who officiated at the funeral service in church, not the pastor or chaplain of the cemetery, has not only the right but also the duty, except for some grave reason, personally or through another, of accompanying the body to the place of burial. Long distance would dispense from this obligation as well as other circumstances which may call for special local arrangements.

3. When a priest conducts a body to the funeral church or to the cemetery he may go with stole and raised cross through a strange parish

or diocese without the permission of the pastor or Ordinary.

4. If the body is taken for burial to a place considered by law as distant enough to render the transfer inconvenient the priest does not have to accompany it nor may he claim the right of doing so beyond the limits of the city or locality. He may go all the way of his own choice or at the request and expense of the family.

V. ATTENDANTS AT FUNERALS. (Can. 1233).

73. 1. The family or heirs of the deceased may invite to the funeral ecclesiastics and religious and pious sodalities; but they should tender this invitation first to the clergy of the church.

The pastor has no right to exclude persons thus legitimately invited except for a just and grave cause approved by the Ordinary.

2. He should never admit societies condemned by the Church or manifestly hostile to the Catholic religion such as masonic, anarchistic societies; nor may he allow the display in church or the funeral procession of their standards, banners, insignia, or emblems of any kind that would not become the sacredness of the place or character of the ceremony.

Strict liturgical rules would permit the use in church or religious functions of those banners or standards only for which the Roman Ritual contains a blessing. In a decree of April 4, 1887 the S. Penitentiary tolerates the national flag in the funeral procession provided it does not bear any forbidden emblems, is carried after the bier and not brought into the church. The custom exists, however, in several countries of bringing

it into the church; the Holy Office declared this lawful in the United States in a decision communicated by Cardinal Rampolla to the Apostolic Delegate in Washington, March 21, 1911. (Ecclesiastical Review, May, 1911, p. 590; Canoniste Contemporain, Juillet 1911, p. 477.)

As the Code positively excludes only emblems hostile to the Church some canonists conclude that it tolerates all others (Antonioli, De Re Funeraria, p. 37 Bergamo, 1919) at least when they can not be excluded without serious inconvenience principally where the custom of such toleration exists as it does in some countries. (Many, n. 215; Cocchi, n. 66; Coronata, n. 223.)

Societies authorized to attend funerals may not use any ceremonies or public prayers which would look like an addition to the Ritual of the Church. (S. R. C., March 23, 1845; E. R., vo. xix, p. 641.)

The Congregation of Rites reproved as abusive the practice of displaying at funerals the picture of the deceased. (April 30, 1896.)

3. The pastor determines the order of the funeral with due regard for the rights of precedence and all who take part in it must obey his directions.

4. Clerics must not carry the body of a layman even of one of high rank or dignity. They are not forbidden to act as pall-bearers for another ecclesiastic particularly for a prelate.

VI. FUNERAL FEES. (Can. 1234–1237.)

74. 1. *Schedule of Funeral Stipends.* (Can. 1234, 1235.) 1°. Local Ordinaries ought to draw up for their respective territories a list of

the contributions obligatory on the occasion of funerals or funeral services unless one exists already. For this they should ask, although they do not have to follow, the advice of their cathedral chapter or diocesan consultors.

They may consult also if they deem it advisable the vicars forane of the diocese or the pastors of the episcopal city. They do not need approval from the Provincial Council or the Holy See.

In determining the rate of these taxes they must take into account legitimate particular customs, which the law does not abrogate, and all the circumstances of persons and places.

In order to remove all occasion of dispute and scandal they should define with all accuracy and moderation possible the rights of all concerned, the celebrant, the ministers, the fabric of the church, in the various cases that may occur such as funerals outside of the proper parish, burial in the family, or elective tomb, etc.

2°. The schedule may distinguish several classes of funerals but the faithful must remain free to choose the one they prefer.

3°. Once legitimately determined these taxes become obligatory for all, but no one has the right to exact more than diocesan regulations allow for burial, funeral, or anniversary services. Exempt religious too come under this law. (c.t., March 6, 1927; A. A. S., 1927, p. 161.)

4°. The poor ought to be buried gratuitously and given a decent funeral with all the rites and ceremonies prescribed by the Ritual and diocesan statutes without exacting any offering whatsoever.

75. 2. *Parochial Portion.* (Can. 1236, 1237.)

1°. *Rights of the Pastor.* The burial of one of the parishioners outside of the parish does not deprive the pastor of all claims on the funeral fees. In consideration of the services rendered to the deceased in life the present like the ancient law gives him a right to a share in them called here the parochial portion and by canonists formerly the *portio funeraria, quarta funerum;* but it explicitly excepts the case when distance excuses from transfer of the body to the parish church or cemetery or when particular legislation rules otherwise.

The parochial portion, then, is due in cases of burial in the elective church or family cemetery or in the church of benefice; it is due to the pastor of the parish of domicile or quasi-domicile of the deceased or to those who in this matter enjoy pastoral rights like superiors of religious in regard to their subjects, rectors, or chaplains of exempt churches or chapels, rectors of seminaries but not to the pastor of the elective church or family tomb.

When the deceased belonged to several parishes to which the body could be conveniently transferred the pastors have an equal right to the parochial portion which they divide among themselves.

76. 3. *Fees in Which the Pastor Shares.* (Can. 1237.) He shares in all the fees established by diocesan statute for the funeral service in church and the burial or interment and in them alone, not in the free offerings made on the occasion of a funeral, nor in the stipends for services on the third, seventh, thirtieth, or anniversary day.

When, for any reason, on the day of the

funeral there are no special or only minor functions as the simple blessing of the grave, or even a private Mass and the solemn service is held later but within a month from the date of the interment, the pastor shares in the fees not for the minor functions but for the solemn service.

The diocesan tax should fix the pastor's share. If the parish and the funeral church belong to different dioceses, the rule established in the diocese of the funeral church serves to determine the pastor's portion.

In these matters, too, ancient customs and particular legislation may modify the prescriptions of the common law.

In some dioceses, by special statute, curates have a share in these fees.

VII. FUNERAL RECORDS. (Can. 1238.)

After the funeral the minister must write down in the parochial record of deaths the name and age of the deceased, the name of parents or consort, the date of death, the sacraments received and by whom administered, the place and date of burial. The Roman Ritual contains a form for such records. (Tit. x, c. 7.)

CHAPTER III

RIGHT TO CHRISTIAN BURIAL OR EXCLUSION FROM IT

(Can. 1239–1242.)

I. GENERAL PRINCIPLE.

77. All persons who certainly die without baptism are excluded from ecclesiastical burial and all it implies (Can. 1204) even children born of Catholic parents. The law, however, confirming an ancient discipline treats as baptized, catechumens under instruction who died without baptism through no fault of their own.

All baptized persons have a right to Christian burial as defined above (Can. 1204) unless the law expressly deprives them of it. As this privation partakes of the nature of penalty it must receive a strict interpretation.

II. CHRISTIANS EXCLUDED FROM ECCLESIASTICAL BURIAL. (Can. 1240.)

78. The present law excludes the following offenders unless before death they showed if not clear and certain, at least probable, signs of repentance by, for example, sending for a priest, kissing the Crucifix, expressing regret:

1. Notorious apostates from the Christian

faith, members of heretical or schismatic sects and members of masonic or other similar societies.

Apostasy and membership in the sects or societies must be not only certain but notorious by law or in fact (Can. 2197) that is generally known and impossible to hide. The sin of heresy alone does not suffice for incurring this penalty.

This exclusion strikes masonic or other societies that plot against public, particularly ecclesiastical, authority (Can. 2335), not directly other societies possibly condemned by the Church but for different reasons.

2. Persons under excommunication or interdict after a condemnatory or declaratory sentence. The present law does not distinguish between the *excommunicati vitandi* and *non vitandi* as long as there has been a sentence to inflict the censure or officially declare that it has been incurred. It prescribes the removal from consecrated ground, if possible, of the body of an *excommunitus vitandus* not of that of the *non vitandus* although it also pollutes the cemetery. (Can. 1172, 1242.)

79. 3. Suicides who have taken their own life with full deliberation. The application of the law supposes certainty of the crime, full responsibility for it and absence of repentance before death. When the first condition exists the other two are presumed except for some proof to the contrary but the Church would not require very strong evidence and in all cases of doubt it would permit at least a private funeral. Leniency here will not ordinarily give scandal as many people consider suicide as an almost sure sign of mental disorder.

4. Duellists who die in the act itself or from a wound received in the duel unless they show signs of penance before death, for they, too, may, under the present law, recover their lost right by repentance.

5. Persons who ordered the cremation of their own bodies. (H. O. June 19, 1926.)

6. Other public and manifest sinners. Canonists give as examples of these persons living in public concubinage or married before the minister or dying in the commission of a public crime, persons publicly known as habitually neglecting their Easter duties, as belonging to a certainly condemned society known as such. The Congregation of the Propaganda interrogated in 1898 on the case of an Odd Fellow answered that notorious members of condemned societies may not receive the sacraments or Christian burial unless they have retracted and been absolved. Should unforeseen death prevent formal retractation the previous dispositions of the person showing regret or devotion might justify the granting of burial without solemnity. (Eccles. Rev., vol. xix, p. 84.) Members of societies condemned only by general law not by particular decree will usually not come under this rule as the prohibition will not be publicly known. (Eccles. Rev., 1892, p. 317.)

III. DOUBTFUL CASES.

80. Whenever there remains any doubt as to the application of this law to certain cases the Ordinary should decide. If time or other circumstances do not permit recourse to him the legis-

lator allows Christian burial recommending care to avoid all scandal.

IV. CONSEQUENCES OF EXCLUSION FROM ECCLESIASTICAL BURIAL.

It implies refusal of any funeral, and also anniversary, Mass and of any other funeral service. The faithful may, however, pray for the deceased and priests offer privately the Holy Sacrifice for him as long as there remains some hope of his salvation. (Can. 809, 2262 § 2, n. 2; Legislation on Sacraments.)

V. EXHUMATION OF EXCOMMUNICATI VITANDI.

(Can. 1241.)

Should an *excommunicatus vitandus* receive burial in consecrated ground in violation of canonical law the Code prescribes, unless it would offer a grave inconvenience, disinterment of the corpse, with the permission of the Ordinary, and entombment in the unhallowed plot set apart for this purpose. (Can. 1212.)

SECTION II

SACRED TIMES. (Can. 1243–1254.)

(Wernz, Jus Decretalium, iii, n. 394–484; A. Villien, A History of the Commandments of the Church, Herder, 1915; Ferreres, Institutiones Canonicæ, ii, n. 174–191; Cocchi, o. c., 73–89; Vermeersch, o. c., n. 551–570; Coronata, o. c., n. 270–320; Blat, o. c., n. 103–118; Moralists, De Præceptis.)

GENERAL PRINCIPLES. (Can. 1243–1246.)

I. NOTION OF SACRED TIMES.

81. By sacred times we understand here days dedicated by public authority to divine service like the Sundays and Feast days of obligation, or set aside for special acts of penance like the days of fasting and abstinence.

II. THEIR INSTITUTION, TRANSFER OR SUPPRESSION.

(*a*) The supreme ecclesiastical authority alone, that is, the Pope or a general Council, has power to establish, transfer, or abrogate Feast days and days of fasting or abstinence for the universal Church.

(*b*) Formerly local Ordinaries possessed this power in their own respective territories but in modern times they had ceased to exercise it at the suggestion if not by positive command of the

Holy See. (Urban VIII, Universam, Sept. 13, 1642 § 3; S. R. C., June 23, 1703, n. 2113.)

The present law expressly allows them to establish days of obligation, of fasting or abstinence, but only by particular enactment, *per modum actus*.

It does not allow them to transfer or abrogate those already in existence; and they can prescribe special ones for their territory only by way of particular transitory measure, not by general law and as a permanent obligation. They may order a fast for one year or perhaps several and for several years but they could not establish even one which would remain in force permanently.

The Code speaks here of local Ordinary which would not include superiors of regulars but as Can. 1253 supposes that Religious Orders may have fasting and abstinence days of their own some take this to imply power in the superiors to establish them. They have no special days of obligation. (Vermeersch, n. 552.)

Local Ordinaries exercise this power in their territory, therefore their decrees affect all who live therein, even regulars.

III. DISPENSATION FROM THESE LAWS. (Can. 1245.)

82. 1. The Sovereign Pontiff has supreme and independent power to dispense from these and all ecclesiastical laws and he has frequently used it in the course of centuries.

2. Bishops have also always enjoyed some power of dispensing in these matters although limited and in modern times at least restricted generally to particular cases.

(*a*) The present law sanctioning with slight modifications a long existing discipline authorizes them to dispense, for a just cause, in individual cases, individual persons or individual families subject to them or actually in their territory, from the Sunday or Feast day law and from the law of fast or abstinence.

The power here granted them is one of dispensation, not of commutation, and it requires a just, not necessarily, grave cause, probable, not necessarily certain.

By virtue of this clause they may dispense individual persons or families not groups of persons. If, however, the reason for the dispensation existed for every member of a group, v. g. of ten, the dispensation given to them all might be considered as equivalent to ten individual ones.

They may dispense only in individual cases, that is, for a certain cause and only as far as that cause extends, not exclusively for individual acts. Thus they may dispense from fasting not simply for each day of Lent but also for the whole of Lent if the reason of the concession applies to the whole season. They could not dispense a person once for all from Lenten obligations.

They may use this power whether they themselves are actually in their diocese or not and in favor of their subjects even though these would happen to be at the time outside of their territory. They may use it likewise in favor of strangers actually in the diocese and this more probably includes all strangers even those who have no residence of any kind.

The dispensation, as a personal favor, accompanies the subject everywhere.

The present law puts no limitations to this power whether as to the days on which it may be used or as to the persons whom it may benefit.

(*b*) Ordinaries may also grant general dispensations for their whole diocese or territory or portions of it from the law of fasting or abstinence or from both at the same time in two well-specified cases and, therefore, in those two only: on the occasion of some large gathering and for reasons of public health.

The cause of this concourse of people does not matter as long as it brings large crowds, whether it be civil or religious, extraordinary like a centenary or recurring periodically at brief intervals of one year or six months like a fair, a pilgrimage, a national feast.

Those large gatherings do not necessarily suppose the presence of strangers, they may consist of the inhabitants of the place or city. (Coronata, n. 280.)

Without this large concourse of people celebrations, however solemn, would not justify the dispensation.

Nothing prevents Ordinaries now from using these faculties on any day even during Lent and all in the diocese may take advantage of their dispensation the regulars included. (H. O., Jan. 20, 1892.)

The Code does not contain any permission for general dispensations from observance of Sundays or Feast days.

83. 3. Pastors, under the former discipline, had acquired by custom power to dispense from the laws regarding sacred times. The present law explicitly gives them in their parishes the same au-

thority in this regard as to Bishops in their dioceses except that they can not grant general dispensations from the law of fasting or abstinence.

4. Superiors in exempt clerical orders enjoy the same prerogatives as pastors in regard to their subjects, that is, not only religious but also lay persons who reside in their house as servants, pupils, or patients. (Can. 514 § 1.) This applies also to local superiors. Like pastors they may dispense visiting religious and not only individuals but small groups corresponding to families in a parish. (Vermeersch, n. 556.)

IV. RECKONING OF TIME. (Can. 1246.)

Days of obligation, of fasting, and abstinence run from midnight to midnight. We may follow in this the local time, mean or real, or the legal time, regional or extraordinary. (Can. 33.)

For gaining Indulgences attached to certain Feast days, if the law prescribes the visit of some church or oratory it leaves one free to make it from noon of the previous day.

TITLE XIII

HOLY DAYS

(Can. 1246–1249.)

(Catholic Encyclopædia, Sundays, Feast days; Dictionnaire de Théologie Catholique, Dimanche, Fêtes; Dictionnaire d'Archéologie Chrétienne et de Liturgie, Dimanche, Fêtes Chrétiennes; Duchesne, Christian Worship, c. viii; Bingham, Antiquities of the Christian Church, Book, xx; Smith and Cheetham, Dictionary of Christian Antiquities, Lord's Day; Wilson, The History and significance of the Lord's day, London, 1910.)

In ecclesiastical language a Feast day in general is one of spiritual rejoicing dedicated by public ecclesiastical authority to the divine service; or in a stricter sense it is a day carrying with it the obligation of abstaining from servile work and assisting at Holy Mass. This includes Sundays and Holy days called also days of obligation. Frequently Feast day means a day of obligation other than Sunday.

I. ORIGIN AND DEVELOPMENT OF THE DISCIPLINE.

84. 1. *Sunday.* 1°. *Origin.* The natural law itself demands the consecration of some portion of our time to external worship. Under the Old Dispensation, by positive precept, God had re-

served to Himself the seventh day of every week; this formed part of the ceremonial law which lost its binding force with the inauguration of the New Order. To the Sabbath Christians gradually substituted the Sunday.

The practice of sanctifying the first day of the week clearly goes back to Apostolic times although in the beginning we find no traces of any precept on this point. After the Ascension of Our Lord the disciples continued to attend services in the temple and synagogues; they gathered together after to pay their duties to their Lord whom the Jews refused to adore and to celebrate the Eucharist in memory of Him. These gatherings usually commenced in the evening of the Sabbath and lasted till the following morning. Thus began the sanctification of the first day of the week. As the church became more completely separated from the synagogue the Sabbath lost its importance and finally its special character. The Eastern Church still observed it in the fourth century as the feast of Creation. In the West it was more generally a day of fasting.

85. 2°. *Attendance at Mass.* Christians met chiefly to partake of the Holy Eucharist. Fidelity to these meetings soon became one of the main obligations of the true disciple of Christ and the test of his loyalty. The Council of Elvira (300, Can. 21) decrees that if anyone living in the city remains three Sundays without going to church he shall be deprived of the communion for a time.

The existence of the obligation once recognized it remained to determine its extent and principally to enforce it. The sermons of St. Cæsarius of

Arles in the sixth century and frequent penalties enacted against offenders by both civil and ecclesiastical authority suppose repeated violations.

In the seventh century Councils prescribe attendance at Mass in the parish church. This ruling met with little opposition till the advent of the Mendicant Friars in the thirteenth century when it became the occasion of bitter controversies. Pope Pius IV intervened in 1478 to maintain the ancient discipline and the rights of parish priests, but the people consulting their convenience or preferences rather than the wishes of their pastors continued to frequent the chapels of the Friars on Sundays. Finally Pope Leo X sanctioned the existing practice and allowed the faithful to hear Mass on days of obligation in the Mendicants' churches. Other Orders soon obtained the same permission for their chapels or custom extended it to them so that by the middle of the seventeenth century nothing remained of the ancient rule and all could fulfill the obligation of hearing Mass on Sunday in any church.

3°. *Vespers.* While insisting on the sanctification of the Sunday Bishops and particular Councils often urge attendance at the evening service and the sermon. Some canonists interpreted their words as expressing a strict obligation but their theory, too severe in itself and without solid foundation, failed to secure general support and has long since been abandoned.

86. 4°. *Servile Work.* The Law of Moses strictly prohibited all labor on the Sabbath. The celebration of the divine Mysteries on the first day of the week naturally demanded at least a momentary suspension of work in the morning.

Then the whole day became dedicated to the Lord. Tertullian speaks of Sunday rest as a well established custom in his time.

Soon after his conversion Constantine ordered "all judges, villagers, and artisans of every trade to rest on Sunday." He allowed farmers to continue their work as harvests depend so much on the weather. The Council of Laodicea (380 ?, Can. 29) asks the faithful to abstain from work on Sunday "as much as possible."

In the course of the fifth and sixth centuries, owing to conditions brought about by the barbarian invasions even such men as St. Cæsarius of Arles manifest a tendency towards Mosaic severity. Some preachers go so far as to pronounce it unlawful on Sunday "to travel with horses, oxen, or any kind of vehicles, to prepare food, or to devote to home and person the care which they require." The third Council of Orléans (538, Can. 28) reproved these exaggerations as savoring of Jewish superstition.

Till now synods had concentrated their efforts on obtaining the cessation of manual work on Sunday; from the eighth century on we meet with numerous enactments against holding court sessions and markets on the Lord's day. People who lived all scattered and came together only once a week insisted on profiting by the opportunity to transact business and have their differences settled.

The list of works forbidden on Sundays kept growing; an author of the ninth century, Rodulf of Bourges, mentions: weaving, knitting, sewing, washing, beating flax, carding wool, and shearing sheep. In Rome, on the other hand, Pope Nicho-

las II in the eleventh century allowed the annual fair on Sunday and about a century later, the crops having failed in Norway, a Bishop obtained from Alexander III permission for his people to go fishing on Sunday.

We find, then as yet, no universal discipline but only particular laws and customs. As after the twelfth century little room remained for further legislation, canonists and theologians labored to determine the principle underlying the existing prescriptions and approved practices.

81. St. Thomas and after him theologians generally define as servile and hence forbidden on Sunday works by which a man becomes the servant of the devil or of another man. To the first category belong all works sinful in themselves or a frequent occasion of sin. As examples of the latter some gave court proceedings, markets, and the taking of oaths.

To the second category belong corporal works proper to slaves or servants while they call liberal, all spiritual or intellectual works and also corporal ones when performed in the service of God and those common to free men and to slaves.

What works are proper to servants? Some would take pecuniary gain as a distinctive mark of servile work or at least as rendering servile a work of uncertain character in itself such as hunting, fishing, copying manuscripts, even teaching. Others maintained that the motive of gain, the length of time required, the amount of fatigue involved, or any other such extrinsic consideration could not modify the nature of a work and that we can call servile only work exercised on matter and belonging to the mechanical order. (Es-

cobar, St. Alphonsus and most modern moralists.)

In recent years the tendency has manifested itself again of laying greater stress on the consideration of gain and to treat as servile, works of a mixed character or even liberal in themselves when done for a remuneration. It seems unfair to some and against the sentiment of the faithful, in this age of feverish competition and hard struggle for existence, to allow opportunities for gain on Sunday to professional men and deny them to mechanics or laborers who may need them more. (Berardi, Praxis Confessarii, ed. 4a, T. 1, 565.)

In reality none of the theories advanced so far has proved fully satisfactory and we should recognize that the law of Sunday rest established by custom depends largely on custom for its interpretation. History shows also that custom has, in many places, a tendency to become more and more lenient.

88. 2. *Feasts.* 1°. *Origin.* In addition to the Sabbath the Jews celebrated every year several feasts, The Pasch, Pentecost, the Feast of the Tabernacles, and others. After their separation from the synagogue, Christians continued to celebrate the Pasch and Pentecost in commemoration of the Resurrection of Our Lord and of the Descent of the Holy Ghost on the Apostles. To these they gradually added other feasts in honor of the Saviour, of St. John the Baptist, the Apostles and the martyrs. St. Cyprian testifies to the practice already established in the middle of the third century of observing the anniversary of the principal martyrs.

89. 2°. *Manner of Celebrating Them.* We know that from the beginning the people assisted

at Mass in large numbers on Feast days, but whether they did so as a matter of strict duty or of mere devotion existing documents do not enable us to decide for the first five centuries. St. Augustine himself gives us no very definite information on this point in his sermons.

In the sixth century the Council of Agde (506, Can. 21) clearly implies the obligation and St. Cæsarius of Arles about the same time explicitly affirms it. The same Bishop commanding the faithful to abstain from servile works on Feast days appeals to the authority of the Holy Fathers which would imply an already established tradition.

As time went on the law on this point became more definite, the number of feasts grew larger and larger and the time of obligatory rest increased. The Statutes of St. Boniface, in the seventh century, prescribe four days of rest at Christmas, four at Easter, and one on about twelve other Feast days. In some places the greater feasts exclude servile work for the whole day, the lesser feasts for only part of the day. A Council of Oxford (1222, Can. 8) distinguishes three kinds of feasts: those which do not admit of any servile work; there were more than fifty; those, about twenty in number, which exclude only heavy works and admit of light works in accordance with the custom of the place; finally those on which it is permitted to cultivate the land, to attend to the *opera rusticana* after hearing Mass.

As feasts owed their origin to Particular Councils, individual Bishops, or local customs, there resulted a great variety of practice and hence

confusion and neglect. Moreover, the days of rest had become so numerous that the poor complained of being deprived of the opportunity of earning their livelihood. To establish some unity of discipline and give satisfaction to the people, Urban VIII, in the Const. Universa of Sept. 13, 1642 published a list of the feasts henceforth to be kept throughout the whole Church, and reduced them to 36. He at the same time admonished Bishops not to establish new ones in future. Although not containing a formal prohibition this last clause became equivalent to one and was interpreted in that sense by the Congregation of Rites. (June 23, 1703.) The feasts in existence seemed, however, too numerous still and petitions for further reductions continued to reach Rome. The Popes maintained the decree of Urban VIII as the common law. On the thirty-six Feast days it had retained, the obligation for pastors of saying Mass for their parish remained, as also the permission to have Ordinations *extra tempora* and to publish the bans of marriage. But for the sake of the people ecclesiastical authority removed on certain Feast days and in certain places the obligation of hearing Mass or of abstaining from servile work or both. Thus the Feast days had been reduced for the people to ten in Ireland, eight in England, six in the United States and four in France.

Uniformity of discipline no longer existed and in some countries people found feasts too numerous for this age of feverish activity. Pope Pius X decided, therefore, to modify the common law again and adapt it to the needs of the times. By his *Motu Proprio Supremi Disciplinæ* of July 11,

1911 he reduced to eight, for the whole Church, the number of days besides the Sundays, on which the faithful would be bound to hear Mass and abstain from servile work. As to the other points of discipline they continued unchanged. Pastors remained bound to say Mass for their people as before. The Congregation of the Council explicitly affirmed this obligation in a decree of Aug. 8, 1911. (Cf. De Religiosis, Sept. 15, 1911, p. 80; Canoniste Contemporain, Juillet 1911, p. 403; Sept. p. 505; Nouvelle Revue Théologique, Sept. 1911, p. 528; Dec., p. 737.)

II. PRESENT LEGISLATION.

90. 1. *Days of Obligation.* The Code here reproduces the text of Pius X with slight modifications and the addition of two feasts.

1°. The only days of obligation by common law at present are the following: all Sundays of the year, Christmas, the Feast of the Circumcision, the Epiphany, the Ascension of Our Lord, Corpus Christi, the Feast of the Immaculate Conception of the B. V. M., the Feast of the Assumption of the B. V. M., the Feast of St. Joseph (March 19), of the Blessed Apostles Peter and Paul and of All Saints.

2°. The ecclesiastical obligation of hearing Mass and abstaining from servile work ceases on all days not explicitly mentioned here even though it had existed from time immemorial, by particular law or special concession of the Holy See. (Cong. of Council, Aug. 8, 1911; Commissio Interpretationis, Feb. 17, 1918; A. A. S., Ap. 1918, 10, 170; Periodica, March, 1920, p. 82.)

The feasts of patrons are no longer of obligation, but Bishops may transfer the external celebration to the following Sunday.

This concerns the feast formerly of obligation of patrons of places, cities, dioceses, provinces, or kingdoms but not that of patrons or titulars of churches which was never kept but as a day of devotion.

The Bishop makes the transfer not the pastor for his parish. It affects only the external celebration not the Office or the Mass.

3°. If in some place any of these feasts had been legitimately suppressed or transferred the Code does not restore them nor allow anyone to do so without consulting the Holy See. The legislator intended to reduce the number of Holy days but not to increase it in any place. Hence, in France, for example, the feasts of obligation continue to be four in number as by concession of Cardinal Caprara (Ap. 9, 1802); in the United States there are six, as by decree of the Propaganda (Nov. 25, 1885; III, Balt. Coun. p. CV), Christmas, New Year's day, The Ascension, the Assumption of B. V. M., the Immaculate Conception and All Saints' Day.

91. 2. *Assisting at Mass.* 1°. On all Sundays and Holy days of obligation the faithful are bound to hear Mass except for some valid excuse. The law does not mention here the sermon, vespers, or any other service.

2°. One fulfils this duty by assisting at a Mass celebrated in any Catholic rite, in the open air, in any church, public or semi-public chapel, and in private chapels erected in cemeteries but not in ordinary domestic chapels except by special

Apostolic Indult. Usually the privilege of a private chapel includes this permission for the grantee himself, his relations to the fourth degree who live in the same house, and the servants actually needed.

3. *Sunday Rest.* The present law explicitly forbids on Holy days, servile works, forensic acts, public markets or fairs, and business transactions.

1°. The legislator does not attempt to give a definition of servile works or to lay down a precise rule by which we distinguish them from liberal occupations. For this we must depend on the common teaching of moralists, local custom, and the general sentiment of the faithful. In doubt the law ceases or easily admits of lenient interpretation if not of dispensation.

2°. Under the name of forensic acts come sessions of civil, criminal, and even of ecclesiastical courts, trials, various formal judicial proceedings like the citing and interrogating of witnesses, pronouncing of the sentence, etc., not acts of semi-private character which do not require strict judicial formalities.

3°. Public markets and fairs which suppose comparatively large gatherings and numerous transactions, public sales like auction sales are also forbidden but they may become permissible by custom and in some cases the Sovereign Pontiffs have authorized them by special Indult.

Private acts or business dealings do not come under this provision but it would seem contrary to the law to keep public stores open on Sundays unless custom again permits it at least for part of the day. (Vermeersch, n. 560.)

TITLE XIV

ABSTINENCE AND FASTING

(Can. 1250–1254.)

(Martène, De Antiquis Ecclesiæ Ritibus, T. iii; H. Thurston, Lent and Holy Week, London, 1904; Catholic Encyclopædia, Lent, Abstinence, Fasting; Dictionnaire de Théologie Catholique, Carême, Abstinence, Jeûne; Dictionnaire d'Archéologie Chrétienne et de Liturgie, Carême; Dictionary of Christian Antiquities, Lent.)

I. ORIGIN AND DEVELOPMENT OF THE DISCIPLINE.

Like the Jews the Apostles and first Christians had their days of fasting and abstinence but for them, after the abrogation of the Mosaic Law these were mere practices of devotion. The obligation arose only gradually as a result of local and general custom.

Although closely connected the two precepts of fasting and abstinence differ sufficiently in their nature and principally in their development to call for a separate treatment.

92. 1. *Fasting.* 1°. *Origin.* The principal seasons of fasting are Lent, Advent, the Ember Weeks, and Vigils.

(*a*) *Lent.* From the beginning Christians made it a practice to prepare for the great Feast of Easter by fasting. St. Irenæus writes about

the middle of the second century that some thought they ought to fast one day, some two, some more. At the end of the third century the Lenten fast generally lasted one week. At the beginning of the fourth we meet with the first mention of the "Quarantine which precedes Easter as a time of special prayer and penance (Nicæa, 325, Can. 5); but this did not necessarily mean forty days of fasting. The Church of Alexandria about the year 329 kept the fast only during Holy Week; in other Churches the fast lasted for two or three weeks. Finally the obligation became extended to the six weeks of the Quarantine and even to seven.

(*b*) *Advent.* Christian devotion demanded a period of preparation for Christmas also. A Council of Saragossa in 380 (Can. 4) urges attendance at the divine services from the seventeenth day of December to the sixth of January but it does not mention fasting. Some Churches of Gaul at the end of the fifth century kept what they called St. Martin's Lent from the eleventh of November to Christmas a period of forty days during which they fasted on every Monday, Wednesday, and Friday. This practice passed into Germany and England some time after but it did not last very long; by the end of the twelfth century it had disappeared, not, however, without leaving some traces. In the United States the fast of the Fridays of Advent had remained obligatory till the publication of the Code as a substitute for certain Vigils suppressed by the Propaganda in 1777 in favor of English Catholics. (Coll. Lacensis, vol. iii, p. 1036; Third Provincial Council of Baltimore, 1837.)

93. (*c*) *Ember Days.* The first historical document that mentions them belongs to the fifth century. Apparently they originated in Rome whence they passed into England, Germany, France, Spain, and Milan. The date for their observance varied. A Council of Mayence in 813 connects them with the first week of March, the second of June, the third of September, and the last week before Christmas.

(*d*) *Vigils.* The early Christians spent part of the night which preceded the Sundays or Feast days in prayer, singing of hymns, and reading of Scriptures. This they called keeping the Vigil or Watch. They prepared, besides, for Easter and later on for other great feasts by abstinence and fasting.

In the course of time the popular nocturnal gatherings fell into desuetude and the fast became the main element of this preparation for the great solemnities. The change from the original vigil to the fast and from a practice of devotion to one of obligation took place gradually and more rapidly in some countries than in others. It was practically complete at the beginning of the ninth century. The number of vigils differed according to times and places. The old Roman calendar marked seventeen but they did not all carry with them the obligation of fasting.

(*e*) *The Major Litany and Rogation Days.* The twenty-fifth of April and the three days before the Feast of the Ascension were formerly not only days of solemn supplication but also of fasting and abstinence. Custom abrogated the obligation of fasting but abstinence had remained

obligatory by common law. In practice Indults had suppressed it almost entirely.

(*f*) *Other Days of Fasting.* For a long time many churches kept all Wednesdays, Fridays, and later on Saturdays as days of fasting. The Council of Elvira (300) commanded one fast every month. A fast of several days was observed, in some places, between the Ascension and Pentecost, in others after Pentecost and before the Feast of St. John the Baptist.

94. 2°. *Manner of Fasting.* In most churches, for several centuries, the law of fasting did not permit the use of any food earlier than about four o'clock in the afternoon. Only in the thirteenth century did it become legitimate to break the fast at the hour of *None* or three o'clock. A century later the hour of *Sext* or *Noon* was generally accepted as the time for the Lenten meal.

The earlier custom prohibited drinks also outside of the meal, but the principle that liquids do not break the fast soon prevailed. To the liquids in common use were gradually added others, such as jellies, preserves, electuaria of various kinds, etc. When people took their one repast at noon they naturally felt more keenly the need of something more than water or wine in the evening. Custom then introduced even in monasteries the practice of taking a little fruit, bread, salad, or other such solid food. This received the name of collation, apparently from the *Collationes* of Cassian usually read by monks about the time of this refection.

The *Frustulum* originated in a similar manner in modern times, custom permitting in the morning, liquids like coffee, chocolate, electuaria, and

with them, lest they should inconvenience the stomach, *ne potus noceat,* a morsel of bread or other food.

At least since the thirteenth century the obligation of fasting commenced at the age of twenty-one. Since the seventeenth century theologians commonly exempt from it sexagenarians and in more recent times some excused women after the age of fifty.

95. 2. *Abstinence.* 1°. *Origin.* At the beginning of the second century all Wednesdays and Fridays were, at least in some places, days of abstinence and of fasting. (Didache, viii, i.)

(*a*) Wednesday had ceased to be a day of fasting in the tenth century and of abstinence in the twelfth if not earlier.

(*b*) The Friday fast continued a little longer and when it ceased, about the thirteenth century, the precept of abstinence remained.

(*c*) Saturday became a day of fasting and abstinence later than Wednesday or Friday and only in the Western Church. The fast no longer existed even in Rome in the twelfth century but abstinence had remained obligatory by common law to the present time; the Holy See dispensed from it by Indult almost in all countries.

(*d*) Originally fasting always implied abstinence. Until comparatively recent years every day in Lent was a day of abstinence, Sundays included. The use of meat was first tolerated then permitted on Sundays; a little later the Holy See allowed it by special Indult on Tuesdays and Thursdays. Pope Pius IX added Mondays and finally, in some cases, Saturdays.

96. 2°. *Nature of Abstinence.* (*a*) St. Epipha-

nius and the historian Socrates speak of some Christians who considered as permitted on days of abstinence the flesh of birds as well as that of fish forbidding only that of quadrupeds. This interpretation of the law did not meet with general approval and common consent included birds also in the prohibition. It proved more difficult to draw the line between flesh-meat and fish. St. Thomas would consider as meat the flesh of animals which live and breathe on land and as fish that of animals which live and breathe in water. But he adds that in this matter we take into account the opinion of the faithful and of medical doctors. St. Alphonsus distinguishes between cold-blooded and warm-blooded animals and he considers the former as fish, the latter as flesh. Other theologians would base their decision on the physiological constitution of the animal, the nutritive value of the flesh and custom. (Antonelli, Medicina Pastoralis, vol. ii, n. 497; Thurston, Lent and Holy Week.) In certain localities people use as Lenten fare various kinds of aquatic birds such as herons, moor-hens, etc., or animals like beavers and otters. The Church has not condemned or approved this practice. We may look upon it as legitimate wherever it has the sanction of custom and as far as the custom extends.

(*b*) Besides flesh-meat which comprises also blood, marrow, lard, meat juice, the ancient law of abstinence prohibited the use of foods that bear some identity of origin with meat such as eggs, milk, and its by-products, butter and cheese. As seasoning it allowed only oil during Lent. Custom and special Indults had mitigated in mod-

ern times the severity of this discipline at least in many places allowing the use of eggs and milk and as seasoning, lard, the grease of pork, and then that of any animal. (H. O., May, 1889.)

(*c*) In some places, for some time, fish itself was forbidden on days of fasting and abstinence, as also wine. In Italy as late as the ninth century, on certain days of Lent the people abstained from all cooked food.

II. PRESENT LEGISLATION.

97. 1. *Nature of Abstinence and Fasting.* (Can. 1250, 1251.) 1°. *Abstinence.* The present common law of abstinence bars the use of flesh-meat and broth or soup made of meat but it explicitly allows eggs, lacticinia, and any kind of seasoning even with the fat of animals.

(*a*) The Code does not give any definition of flesh-meat as distinct from fish; no classification can preclude all doubt concerning the category to which certain amphibians in particular should belong. Local usage together with the practice of intelligent and conscientious Catholics rather than scientific analysis will supply the necessary guidance in this matter. In cases of doubt the law does not bind.

Meat comprises blood, the marrow of bones, brains, suet, peptones, and other foods made principally from meat but not those made chiefly from other substance.

(*b*) The term lacticinia serves to designate milk and its various by-products, butter, cheese, etc.

(*c*) Any condiment provided it does not be-

come the principal element in the food or a notable portion of it but serves only to season it is now permitted, whether solid or liquid, butter, margarine, lard, drippings, the fat of any animal. The Holy Penitentiary declared, Nov. 17, 1897, that in case lard is used as a condiment if some solid parts of it remain in the food as long as they retain their character of condiment they may be eaten with the rest on abstinence days.

Certain preparations, peptones, or others contain meat but in small proportion. The law of abstinence does not forbid to use them as condiments; they should not, however, transform, for example, soup into broth. (N. R. T., 1924, p. 155.)

98. 2°. *Fasting.* The law of fasting allows only one meal a day but it does not forbid the taking of some food in the morning and the evening.

(*a*) Ancient canonists distinguished two or three elements in the ecclesiastical fast: abstinence from meat, only one meal, taken at a certain time, not much earlier than mid-day. The present law places the whole essence of the fast in the oneness of the full meal. It requires no longer abstinence, nor does it explicitly fix any special time for the meal. The mention of the *frustulum* in the morning and the collation in the evening leaves as the normal moment for it the middle of the day, but the permission to interchange dinner and supper or to have the principal meal in the evening without any particular reason shows that the question of hour has only a secondary importance. Hence the conclusion drawn that whilst it would be unlawful to take the principal meal

or the collation in the morning without reason, any serious cause will justify that practice and that such change would in no case vitiate the fast or constitute a grave disorder as it does not affect the substance of the fast. (Vermeersch, n. 566; Coronata, n. 301.)

(*b*) The common law does not determine anything as to the quality or quantity of the food permitted at the morning *frustulum* or evening collation. Everyone must follow in this the custom or the generally received practice of the place. In Italy custom does not allow milk or butter for the collation; in Spain it excludes fish; in the United States special Indults had introduced for some time the practice of using eggs, lacticinia, as well as fish. The rule given above regarding the use of condiments holds also, no doubt, for these secondary refections.

The President of the Commission of Interpretation declared it unlawful in any place to eat meat outside of the principal meal on fast days, because custom nowhere permits it. (Monitore Ecclesiastico, 1920, p. 16.) This applies only to persons bound to fast; others may eat meat at every meal.

As to the quantity many authors speak of two ounces of food for the *frustulum* and about eight for the collation, but this rule admits of broad interpretation, with due regard to the needs of the subject and the nutritive properties of the food taken.

(*c*) The prohibition of the use of meat and fish at the same meal no longer exists.

99. 2. *Days of Fasting and Abstinence.* (1252,

1253.) 1°. On certain days abstinence alone is obligatory, on other days fasting as well as abstinence, on others again, only fasting.

(*a*) To the first category belong the ordinary Fridays of the year; to the second, Ash Wednesday, the Fridays and Saturdays of Lent, the Ember days, and the four Vigils of Pentecost, the Assumption, All Saints' Day and Christmas; to the third the other days of Lent except the Sundays.

(*b*) Thus we have as days of abstinence, all Fridays of the year, the Saturdays of Lent, Ash Wednesday, the Ember days, and the four Vigils; and as fast days, all week days of Lent, the Ember days, and the four Vigils.

(*c*) The Bishops of Belgium, England, France, Holland, the United States, and others have obtained for their dioceses the transfer of the Saturday abstinence during Lent to Wednesday. In answer to a question to which this particular discipline had given rise the Congregation of the Council decided in a particular case that a person travelling through a diocese in which abstinence is kept on Wednesday has the choice of the Wednesday or Saturday but must keep it on one of these days besides the Friday. (Feb. 9, 1924; A. A. S., 1924, p. 94; N. R. T., Mars, 1924, p. 155; Av., p. 250; Periodica, la Maii, 1924, p. 47; Monitore, Feb. 1924, p. 38.)

100. 2°. *Special rules.* (*a*) On Sundays and Holidays of obligation outside of Lent the laws of fasting and abstinence do not bind, so that when a feast of obligation falls on a Friday or one of the Ember days or Vigils the law of fasting and abstinence ceases.

This, however, does not apply during Lent. Thus the nineteenth of March remains a day of fasting unless it falls on a Sunday.

Feasts dispense from fasting or abstinence only where they are kept as days of obligation, not where they are suppressed or transferred. (A. A. S., 1918, p. 170.) In the United States should the twenty-ninth of June feast of the Apostles Peter and Paul fall on a Friday the abstinence would remain obligatory.

(*b*) Vigils are not anticipated. Thus when the Assumption falls on a Monday there is no obligation of fasting or keeping abstinence the previous Saturday even though the office of the Vigil be recited on that day.

(*c*) On Holy Saturday the law of fasting and abstinence ceases at noon. This clearly implies that till that moment the law binds in the same manner and admits of the same interpretation and applications as on the other Saturdays of Lent but of no others.

101. 3°. *Particular Discipline.* The prescriptions of the Code on fasting and abstinence abrogate the particular legislation or customs contrary to them but they do not affect Indults, vows, or constitutions of religious or pious societies.

(*a*) The Bishops of the United States had received from the Holy See various Indults pertaining to this matter, the Indult of Sept. 2, 1837 allowing the use of flesh-meat on the Wednesdays of Advent; that of July, 1858 granting the same permission for the ordinary Saturdays of the year. These have become obsolete. The Quadragesimal Indult given first Aug. 3, 1887, for ten years but renewable at the end of that period

contained important concessions in regard to the Lenten abstinence. It might still hold if renewed in due time but there is practically no reason for it as the common law substantially embodies now all its provisions.

The Indult granted by Pius IX in favor of the soldiers and sailors remains in force. It authorizes them to use flesh-meat every day of the year except on Ash Wednesday, Good Friday, Holy Saturday till noon, the vigils of the Assumption, and of Christmas. They may enjoy this privilege only while in active service, not when on leave of absence. The favor extends to their families if living with them and eating at the same table but not if living apart.

By another Indult (March 15, 1895) the Holy See granted for ten years to the Bishops of the United States Faculties renewed since, enabling them to dispense workingmen and their families from the law of abstinence all the days of the year except Fridays, Ash Wednesday, the abstinence days of Holy Week, and the Vigil of Christmas if considering the circumstances of persons and places they judge that the keeping of abstinence offers serious difficulties. The Holy See does not in this case directly dispense but authorizes Ordinaries to do so if they deem it opportune.

As explicitly stated, for persons bound to fast this dispensation can mean only permission to use flesh-meat once a day.

The privilege enjoyed by the head of the family or any one of its members extends to all the others.

The term workingmen *operarii* ordinarily serves to designate laborers or mechanics. Some

have interpreted it to include also professional men such as physicians, lawyers, store-keepers, etc. but without solid foundation. (Eccl. Rev., Oct. 1895, p. 295.)

(*b*) If individual persons or moral bodies had bound themselves by vow to observe certain days of fasting and abstinence the publication of the Code did not release them of their obligation except that probably they may now understand fast and abstinence in the sense of the present law unless otherwise stipulated. Vows as such bind only those who made them, not their successors. (Can. 1310.)

(*c*) Neither did the Code introduce any change in the obligation of fasting or abstinence imposed by the rules and constitutions of approved orders or institutes of men or women, or of communities without vows.

3. *Subjects of the Law.* (Can. 1254.) The law of abstinence binds all who have completed their seventh year and enjoy the use of reason.

The law of fasting binds those who have completed their twenty-first and not yet reached their sixtieth year. Some canonists freed women after the age of fifty; the present law does not make that distinction between men and women.

PART III

DIVINE WORSHIP

(Can. 1255–1321.)

(Wernz, vol. iii; Duchesne, Christian Worship; Ferreres, ii, n. 192; Cocchi, n. 90; Blat, n. 119; Vermeersch, n. 571; C. Callewaert, De Sacra Liturgia universim, Beyaert, Bruges, 1920.)

After dealing in the First Part of this Third Book on Sacred Things, with the Sacraments and Sacrifice as the divinely instituted means of sanctification and salvation, then in the Second Part with the Times and Places specially dedicated to the divine service, the legislator proceeds in this Third Part to treat of the divine worship itself or of the principal human acts by which we discharge the duties of religion.

The Code gives here only the general rules that govern religious worship leaving the details and what pertains to rites and ceremonies to Liturgy.

This part opens with some more fundamental principles, then in five distinct Articles it lays down the laws regarding the Worship of the Blessed Sacrament, the Worship of the Saints, Sacred Images and Relics, Sacred Processions, Sacred Vessels, Vows, and Oaths.

GENERAL PRINCIPLES. (Can. 1255–1264.)

I. NATURE AND KINDS OF WORSHIP. (Can. 1255, 1256.)

102. 1. In a broad sense worship includes all acts of religion, but we deal here only with external ones; its direct object is the honor and glory of God.

2. It may be distinguished into worship of *latria, dulia,* and *hyperdulia;* into public and private worship, absolute and relative.

(*a*) The worship of *latria* or adoration strictly so called implies recognition of supreme authority and infinite perfection calling for profound reverence and submission. It belongs to God and to Him alone, that is, to the Blessed Trinity and each one of the Divine Persons and to Christ even in His sacramental state.

The worship of *dulia* is the homage paid to the Saints as friends of God and sharers in his divine life; it receives the name of *hyperdulia* when paid to the Blessed Virgin as the most perfect and most exalted of all pure creatures, still a creature.

Sacrifice of its nature expresses adoration and hence belongs exclusively to the worship of *latria.* By what other acts we must honor God and what form the worship of the Saints should take is determined in detail by liturgical law and rubrics.

103. (*b*) Absolute worship supposes in its object merit and moral excellence; it may, therefore, be paid only to persons. To things we may render relative honor, not because of their intrinsic value but because of their relation to a person entitled to this respect. Thus we venerate the relics of the Saints and their images thereby honoring the Saints themselves.

(*c*) For public, as distinct from private, worship the law requires that it be offered in the name of the Church, by persons legitimately deputed for this purpose and in the manner prescribed for the worship of God or of the Saints and reserved to them. Benedict XIV declared, however, that even if paid privately, honors reserved by positive law to canonized or beatified persons would constitute a public worship so as to become an obstacle to their formal canonization. (Quamvis Justo, April 30, 1749 § 12.)

The Church reserves to canonized Saints or to the Blessed such honors as: placing their image on the altar, placing votive offerings on their tomb, having a light burning before their relics or exposing them to public veneration. The Congregation of Rites issued a decree on August 14, 1894 stating that: the images of persons who died in odor of sanctity but had not yet attained the honors of beatification or canonization could not be placed on the altars and could not be represented with a nimbus or halo around their head or other emblems of sanctity; but that their images or deeds could be depicted on the walls of the church or on colored glass provided such images bore no indication of religious honor, nor anything profane or contrary to ecclesiastical tradition.

II. AUTHORITY TO REGULATE PUBLIC WORSHIP.

(Can. 1257.)

104. The Apostolic See has now the exclusive right to regulate public worship and approve liturgical books.

During the first centuries individual Bishops enjoyed considerable authority in this matter. Towards the end of the fourth, in order to secure some uniformity particular Councils reserved to themselves the liturgical legislation. (Hippo, 393, Can. 21; Agde, 506, Can. 30.) This permitted the growth of a number of different rites, Gallican, Ambrosian, Mozarambic, and others.

In the eighth century, through the action of the Popes and of the Emperors, particularly of Charlemagne, the Roman Liturgy was introduced into France, Germany, England, Scotland, and Ireland, becoming gradually the commonly received form of worship; only Bishops still retained power to modify many details. To remedy the confusion which had arisen from this Pius V published a new revised edition of the Roman Missal and Breviary which he made obligatory for all with a few exceptions, reserving to the Holy See, at the same time, the right in future to modify or revise them. Subsequent Popes extended this reservation to all liturgical books. (Wernz, n. 325.) By the present law also no one may publish liturgical books without authorization from the Holy See. For the reproduction of texts already approved the permission of the Ordinary guaranteeing conformity with the original or typical edition suffices.

The principal liturgical books are the Missal, Breviary, Ritual, Pontifical, Martyrology, Ceremonial of Bishops, Roman Ceremonial, the Collection of decrees of the Congregation of Rites.

III. COMMUNICATION WITH NON-CATHOLICS.

(Can. 1258.)

105. Communication here means association or co-operation with others. We may have this communication in purely civil and social or in religious matters. It may be active or purely passive both on our side and on the other, that is, we may assist at or take part in, the religious services of others or let them assist or take part in our own.

(*a*) The present law has no provision regarding communication with non-Catholics in civil matters; it remains forbidden by divine law if it proves dangerous in any way to faith or morals.

(*b*) Neither divine nor ecclesiastical law forbids the merely passive presence of non-Catholics at Catholic services. Some particular decrees would not permit positively to invite them (H. O., Sept. 22, 1763, Dec. v) but others approve of such invitations to sermons or instructions. (Jan. 14, 1874, xviii, 2.)

In an Instruction issued June 8, 1859 the Holy Office declares it unlawful to admit heretics into the choir during services, to give them the kiss of peace, let them join in the psalmody and distribute to them blessed ashes, candles, palms, or other objects of this nature. The present law, however, does not exclude non-Catholics from all blessings nor from the use of all sacramentals particularly of blessed ashes, candles, and palms, as the Congregation of Rites explicitly stated. (Can. 1149; S. R. C., March 9, 1919; A. A. S., 1919, p. 144.)

The Holy Office has by various decrees re-

proved the active participation of non-Catholics in Catholics rites; thus it would not allow them to serve Mass (Jul. 7, 1864), sing in the choir, or play the organ, except in cases of necessity as a subsequent declaration explained (Feb. 23, 1820; May 1, 1889, Jan. 24, 1906), act as sponsors in baptism or confirmation (1871, xvii), not even to act as witnesses in a marriage ceremony except for reasons of necessity. (Aug. 19, 1891, Dec. xxii.)

These are all particular decrees called for ordinarily by local conditions useful as expressions of the mind of the Church but without universal or necessarily binding force in themselves. The present law has no explicit, direct provision on this special point. It forbids non-Catholics to act as sponsors in baptism or confirmation. (Can. 765, 795.)

106. (*c*) Except for accidental circumstances which might render it objectionable nothing prevents Catholics from visiting non-Catholic churches as they would any other building, through curiosity, or for some other motive but without religious purpose.

The divine law itself prohibits association with non-Catholics in a false superstitious worship. According to some theologians it would not forbid co-operation with them in a legitimate form of worship (Suarez, De Fide, 22, i) but ecclesiastical law does.

The Code pronounces it unlawful for the faithful in any way to take an active part in religious functions of non-Catholics. It tolerates the merely material or passive assistance as a mark of of respect or friendship, for grave reasons, at

funerals or marriages of non-Catholics or similar ceremonies provided there be no danger of scandal or perversion, and in cases of doubt regarding the sufficiency of the reason, after consulting the Ordinary if possible.

Former decrees of the Holy Office give as examples of unlawful participation in non-Catholic worship, going to the churches of schismatics to hear Mass or attend a religious service, joining in the prayers or rites (Dec. 5, 1668, i), playing the organ for the service (June 19, 1889) and *a fortiori* singing in the choir, acting as sponsor in baptism or as witness in a marriage ceremony (May 1, 1770, vi) unless in the latter case nothing more is required than the mere material presence. (June 8, 1859, xiv; Blat, n. 125.)

The law may require a stricter application in some places than in others; it concerns only acts of public worship, not, for example, the offering of private prayers with non-Catholics. (Vermeersh, n. 578.)

IV. APPROVAL OF PRAYERS OR EXERCISES OF DEVOTION. (Can. 1259.)

107. 1. It is not permitted to use in churches or oratories prayers or forms of devotion which the Ordinary of the place has not approved and expressly authorized. In cases of doubt as to their opportuneness, dogmatic correctness, or conformity with traditional requirements the Ordinary should refer the whole matter to the Holy See, the Congregation of Rites, or the Holy Office.

The law speaks here of oratories without distinction between the public or semi-public, the exempt or non-exempt ones. It, therefore, applies to all as did the decree of the Council of Trent on the same subject (Sess. xxv, De Invocatione Sanctorum); but it does not affect strictly private devotions, nor those that have the sanction of legitimate custom.

2. The rule for Litanies is still stricter because, no doubt, of the frequent abuses to which their great popularity after the concession of Indulgences for their recitation has given occasion. Bishops themselves have no authority to approve new ones for public use and the Congregation of Rites considers as public the recitation or singing by several persons together even outside of liturgical functions, as, for example, by a community of nuns in choir or by a group of faithful in a church or public chapel although no clergyman assist. It allows the recitation of litanies not approved by the Holy See only in private, by individual persons. (March 6, 1894, n. 3820; Jun. 20, 1896, n. 3817; Feb. 11, 1896, n. 3917.)

The litanies approved by the Holy See are the litanies of the Saints, of the Holy Name, of the Blessed Virgin, of the Sacred Heart, and of St. Joseph, which admit of no addition, change, or alteration of any kind without authorization from the Congregation.

Ordinaries may approve litanies for strictly private recitation or singing; these do not even require approbation except for their publication or circulation among the faithful. (B. Ojetti, Synopsis Rerum Moralium, Litaniæ.)

V. EXCLUSIVE RIGHT OF THE CHURCH TO REGULATE WORSHIP. (Can. 1260.)

108. In what pertains to the exercise of divine worship, ministers of religion depend exclusively on their ecclesiastical superiors. Civil rulers may ask for prayers but they can not prescribe them; they may express desires in regard to the hour or form of services or other details but they have no right to issue orders.

VI. DUTY OF ORDINARIES TO WATCH OVER DIVINE WORSHIP. (Can. 1261.)

1. Local Ordinaries are warned to attend carefully to the faithful observance of the prescriptions of the sacred canons regarding divine worship and particularly to see that no superstitious practices creep into public or private worship and into the daily lives of the faithful, that nothing be introduced little in keeping with the teachings of faith or ecclesiastical tradition, or savoring of sordid profit-making.

2. Laws enacted by the local Ordinary on this matter bind all in the territory even exempt religious and to insure obedience he has the right to visit their churches and public oratories.

VII. EXTERNAL ATTITUDE IN CHURCH. (Can. 1262.)

109. The legislator expresses the desire without formulating an express command that in conformity with the ancient discipline the women should be separated from the men in church.

When assisting at sacred functions, whether in church or outside of it the men should have their heads uncovered unless the legitimate custom of

the country or some special circumstance like the rigor of the weather does not permit.

The women should always have their heads covered in church or when assisting at divine services and be modestly dressed particularly when they approach the Holy Table.

VIII. SPECIAL SEATS IN CHURCH. (Can. 1263.)

110. 1. Civil magistrates may occupy special seats in church according to their rank and dignity, within the limits prescribed by liturgical rules. These allow them to have a kneeling bench covered with drapery but outside the sanctuary or choir reserved to the clergy. In some countries, however, custom permits to give the higher magistrates a seat in the sanctuary on particularly solemn occasions. (Ferreres, l. c., n. 206.) They may in their proper place be given the *pax cum instrumento* and be incensed with two swings of the censer. (Cæremoniale Episcoporum, Lib. i. c. xiii, n. 13.)

2. Without the consent of the local Ordinary none of the faithful should have a seat reserved for himself and his family in church. The permission of the pastor does not of itself suffice. Before granting this privilege the Ordinary must see that sufficient provision has been made for the accommodation of the rest of the faithful.

The Catholic Church does not favor what looks like class distinction in the house of worship and has rather emphasized at all times the principle of universal equality before God.

3. The concessions made regarding seats in church always contain the tacit condition that the Ordinary may revoke them for a just cause even

after a long period of years. Prescription does not run here against the owner.

IX. CHURCH MUSIC. (Can. 1264.)

111. 1. Vocal or instrumental music containing any thing lascivious or impure, sensuous or worldly ought to be excluded from the church and liturgical rules on the subject strictly adhered to.

Pope Pius X summed up these rules in the *Motu Proprio* of Nov. 22, 1903. He assigns the first place in religious services to plain chant and the second to polyphonic or palestrinian music. He admits also modern or figured music on condition that it possesses the character of sobriety and modest gravity becoming sacred songs and complies otherwise with liturgical requisites. Sacred music forms a real, yet only complementary, part of the service, it should not become the principal one nor turn the attention of the faithful away from the liturgical rite. It must help to bring out the thoughts and sentiments expressed by the words, else although perhaps beautiful in itself and of real merit according to the principles of art, it does not fulfill its purpose.

2. As to the qualifications of the singers Pius X declares that they have a real liturgical office regularly reserved to men or boys to the exclusion of women, and calling for serious piety and probity of life.

The Congregation of Rites explained in subsequent decrees that the Holy See did not intend to prevent women from taking part in the public services of the Church; they may join in the congregational singing. In cases of necessity the

Ordinary may even permit them to form a choir to take the place of men (Jan. 17, 1908). But the Congregation did not approve of mixed choirs as commonly exist in the United States in which men and women sing together, although they be in the organ-loft outside of, and a good distance from, the sanctuary. The Ordinary must insist on separation of sexes. (Neo-Eboracensis, Dec. 18, 1908; A. A. S., 1908, p. 175.)

The Code does not enter into these details; it provides only that nuns or sisters authorized by their rules, liturgical law and the local Ordinary to sing in their churches or public chapels must do so from a place in which the public can not see them.

TITLE XV

RESERVATION AND WORSHIP OF THE HOLY EUCHARIST

(Can. 1265–1275.)

(P. Gasparri, Tractatus Canonicus de Sanctissima Eucharistia, c. IX, X; Wernz III, n. 548–553; Blat, o. c., n. 132; Vermeersch, o. c., n. 588; Ferreres, o. c., n. 210; Cocchi, o. c., n. 97; Martène, De Antiquis, Ecclesiæ Ritibus, L. i, c. v, a. 1; J. Corblet, Histoire du Sacrement de l'Eucharistie, vol. i, L. xii, Paris, 1885; T. E. Bridgett, C. SS. R., A History of the Holy Eucharist in Great Britain, P. iii, Ch. iv, London, 1908; Catholic Encyclopædia, Reservation; Month, 1907, p. 377, 617; Dictionary of Christian Antiquities, Reservation.)

I. RESERVATION OF THE HOLY EUCHARIST.

(Can. 1265–1270.)

112. 1. *Ancient Discipline.* St. Justin tells of deacons carrying to the absent after the celebration of the Holy Eucharist a portion of the Consecrated Species preserved for them. (Apol. i, 65; A. D., 140.) From other sources we know that those who thus received the sacred elements in their homes did not have to consume them at once but might keep them for future occasions. Tertullian speaks of a Christian woman as partaking of the sacrament secretly at home before taking any other food (Ad Uxorem, II, 5) and

St. Cyprian in the middle of the third century tells the story of another who attempting to open with unworthy hands the casket in which she kept the Eucharist was deterred by a fire rising out of it. (De Lapsis, 132.) St. Jerome mentions a poor Bishop who used to carry the body of the Lord in a wicker basket and His blood in a vessel of glass. (Epist. 125.) St. Basil informs us that at Alexandria and in Egypt the laity generally had the Holy Eucharist in their house and that monks or nuns or hermits who dwelt alone in the desert far away from any priest had the Holy Sacrament with them and received it at their own hands. (Epist. 93.) St. Ambrose refers to some Christians in danger at sea who have with them the Blessed Sacrament. (De Excess. Frat., i, 43.)

In churches the Holy Eucharist was reserved chiefly for the sick to whom the deacon brought it secretly in times of persecution. Eusebius relates after St. Dionysius of Alexandria how a sick priest unable to visit a dying person sent him the Holy Eucharist through a boy whom the sufferer had deputed to ask for the Holy Viaticum in the middle of the night. (Eccl. History, VI, 44.) The Council of Nicæa (325, Can. 13) urges fidelity to the old rule of the Church not to deprive the dying of the last and most necessary Viaticum. We know from St. Paulinus how when St. Ambrose felt death approaching a priest warned of his state brought to him the Holy Eucharist.

In a Penitential ascribed by some to the Venerable Bede we read that priests when they go among the people should take the Holy Eucharist with them and St. Boniface decreed that no priest

should start on a journey without the Holy Chrism and Eucharist.

113. 2. *Right of Reservation.* The reservation of the Holy Eucharist in a certain place requires there the presence of a person, lay or cleric, (S. R. C., Feb. 17, 1881, n. 3527) to act as guardian of the Tabernacle and that of a priest to say Mass once a week with some possible exceptions. The priest himself may act as guardian.

1°. *Churches and Chapels.* Supposing these two conditions fulfilled some churches must reserve the Holy Eucharist, others may do so, others may not without pontifical Indult.

(*a*) To the first category belong all cathedral churches, the main church of every abbey or prelacy *nullius,* all parochial and quasi-parochial churches and the churches of exempt religious communities whether of men or of women as long as they are canonically erected.

(*b*) With the explicit or implicit and even presumed permission of the Ordinary of the place the Blessed Sacrament may be reserved:

In collegiate churches and in the principal oratory or chapel of religious communities, including under this name communities of persons who live together without vows;

In the principal, public or semi-public, chapel of pious institutions, such as houses of retreats, hospitals, and orphan asylums conducted chiefly for a charitable purpose, colleges and schools for the Christian education of the young;

In the main chapel of ecclesiastical colleges governed by secular priests or religious like seminaries, juniorates, scholasticates, novitiates.

To these canonists generally add the chapels in houses of Bishops or Cardinals.

According to some canonists in order to enjoy the privilege granted to pious houses, institutions must be under the control of ecclesiastical authority (Blat, l. c., n. 133); others demand only that they have a chaplain to attend to the spiritual needs of the inmates. (Vermeersch, l. c. n. 589; Cocchi, l. c., n. 98.)

To reserve the Blessed Sacrament in their oratories the regulars themselves need the permission of the local Ordinary; that of their superior does not suffice except by special concession of the Holy See.

114. (*c*) Churches or oratories other than the ones enumerated above, such as domestic chapels, infirmary, or rural chapels of religious, oratories of confraternities or sodalities, may not habitually reserve the Blessed Sacrament without special papal Indult. The local Ordinary may grant that permission to churches and public, not private, oratories but only for a few days not by way of permanent concession. Should some accidental cause like need of repairs require the removal of the Blessed Sacrament from the church the Ordinary might probably grant the necessary authorization to keep it temporarily in a private oratory which would then take the place of, and become, the principal one.

Indults for reservation of the Blessed Sacrament may be obtained from the Congregation of Sacraments by secular priests, from the Congregation of Religious by religious and from the Propaganda by those under its jurisdiction.

115. (*d*) In all cases religious or pious institutions allowed to reserve the Blessed Sacrament may have it only in their church or in the principal oratory not in others; the Code expressly revokes privileges contrary to this provision. Moreover, nuns may not keep the Blessed Sacrament within their choir or the convent enclosure.

The Commission for the Interpretation of the Code (June 3, 1918) explained this canon as meaning that if an institution, religious or pious house has a public church which serves for the ordinary and daily spiritual exercises of the community, it is in this church and in it alone that the Blessed Sacrament must be reserved. If the institution has no public church or it is not used for the ordinary exercises, the Blessed Sacrament may be kept in the principal oratory of the house. It may be kept at the same time in the church if the latter has otherwise a title to this privilege, for example, as church attached to an exempt religious house. (Can. 1265 § 1.)

In the house itself it is permitted to reserve the Blessed Sacrament in the principal oratory alone which means in only one place, unless the same material building serving for several families or communities different and separate with a distinct government, regime, or mode of religious life would constitute formally distinct houses.

Ordinarily communities do not use the public church for their daily spiritual exercises but rather the principal oratory in the house. They may, then, under certain conditions reserve the Blessed Sacrament in both. Often also in the same material building live several groups of persons who

have a different kind of spiritual life and work and form really distinct communities. Thus in a hospital or orphan asylum the sisters and their charges; in a college or academy conducted by sisters or religious, the pupils and the teachers; in a seminary the clerics and the sisters in charge of the domestic department; in a provincial house which serves at the same time as house of retreat, the invalid and the active members of the community. (Cocchi, n. 98; Monitore, 1918, p. 240.) Here, too, custom and principally pontifical Indults may extend still further the concessions of the common law.

116. 2°. *Private Persons and Homes.* (*a*) As said before the early Christians were allowed chiefly in times of persecution to have the Holy Eucharist in their homes and to carry it with them on their journeys. (Gasparri, n. 971; Wernz, n. 549.) With the end of the persecutions and the multiplication of churches the need of private reservation practically ceased, still the practice continued for some time, but as it led to abuses synods discouraged and finally suppressed it. In the West mentions of reservation by lay persons occur rarely after the fifth century. Bishops, priests and monks retained the old custom much longer particularly in the East. A Bishop of Corinth in the tenth century answering a question of Luke the Younger, an anchoret in Achaia, explains to him in detail how hermits who have no priest must receive Holy Communion. According to Martène (l. c. art i, v) it had remained the custom in many religious houses of women in the West down to the eleventh and twelfth centuries if not later to give a provision of Con-

secrated Species to nuns on the day of their solemn profession so that they might spend a period of eight days in a sort of retreat partaking daily of this heavenly food.

By the end of the twelfth century it had become by custom and synodal decrees the common law in the West not to reserve the Holy Eucharist outside of churches or chapels and not to carry it privately to the sick or on journeys except in cases of necessity. The Holy See had occasionally to correct negligences. In a decree of March 27, 1663 the Holy Office warns priests in China not to take the Holy Eucharist with them on their long journeys and the Prefect of the Propaganda in a letter to the Archbishop of Baltimore (Feb. 25, 1859) asks him and the other Bishops of the country to eliminate as soon as possible a practice or rather abuse which existed in some dioceses, priests keeping the Blessed Sacrament with them all day lest they should meet someone who needed the Holy Viaticum. (Coll. Prop. n. 733; II Plen. Balt., p. 297.)

In some extraordinary cases the Holy See has allowed individual persons even lay people to have the Blessed Sacrament in their house or prison. Circumstances at times demand that it be kept not in the church but in the priest's residence. (I Halifax, 1857, xiii; Tuam, 1858, xv; Coll. Lacensis, iii, p. 741, 886.)

(*b*) The Code confirming the former discipline enacts that no one may keep the Blessed Sacrament in his house nor carry it with him when travelling. The Popes had retained till modern times the practice of taking it with them on their

journeys but no other dignitary has the right to do so.

117. 3. *Place of Reservation.* (Can. 1268–1270.) 1°. *Altar.* In the early ages the place of reservation varied. Ancient writers mention in this connection the sacrarium, the baptistery, the monastic infirmary, ambreys or cupboards, niches or recesses in the wall near the altar, dove-shaped vessels suspended over the high altar, "sacrament-houses" a short distance from the altar on the gospel side, etc. (Corblet, l. c., p. 550.) For several centuries custom and legislation have connected the reservation with the altar. The Code supposes this to be the law and makes the following provisions for its application: (*a*) The Blessed Sacrament may not be kept on more than one altar in the same church at least in a permanent and habitual manner. For some special occasions, like a *triduum* or a *novena* the law would not forbid to have it on two different altars. By way of exception churches that have perpetual exposition of the Blessed Sacrament may or even should reserve it on another altar also for the distribution of Holy Communion.

(*b*) It should be kept in the most prominent and most honorable place in the church and, therefore, regularly on the main altar unless the church possesses another more ornate or more convenient for worship.

Liturgical rules require the transfer on Holy Thursday of the Host intended for the Mass of the pre-sanctified on Good Friday to the Repository or altar of the sepulchre and also the re-

moval of other consecrated particles to a different altar.

(*c*) In cathedral, collegiate or conventual churches which hold the choral functions at the main altar, it ordinarily proves more convenient and the law suggests to keep the Blessed Sacrament on another altar so as to leave more freedom for the ceremonies.

(*d*) Rectors of churches must give special attention to the altar of the Blessed Sacrament and have it more elaborately decorated than the others so that its very appearance may excite the piety and devotion of the faithful.

118. 2°. *Tabernacle.* (Can. 1269.) Fixed and locked tabernacles seem to have come into general use on the continent of Europe in the fifteenth century and a little later in England. Gradually they became as they remain obligatory everywhere, particularly since the decree of Aug. 21, 1863. (Catholic Encyclopædia, Tabernacle.)

(*a*) The present law explicitly requires for the reservation of the Blessed Sacrament an immovable, that is, not easily movable tabernacle placed in the middle of the altar.

It does not admit, therefore, the former movable dove-shaped vessels or turrets; nor would it approve ordinarily the ambreys or receptacles in the wall of the church or in one of the pillars.

(*b*) This tabernacle must be skilfully constructed, securely closed on all sides, properly decorated in accordance with liturgical prescriptions, containing nothing but the sacred species and so carefully guarded as to remove all danger of profanation.

Liturgical rules call for a veil or canopy, white

or of the color of the day, to cover the tabernacle and for an interior lining of white cloth, except in the case of tabernacles gilded inside. If their shape makes it difficult to cover some of them with a veil a *baldacchino* placed over them may serve as a substitute.

(*c*) Any serious reason approved by the local Ordinary would justify the removal of the Blessed Sacrament for the night to a safer place, distinct from the altar but becoming. The Sacred Species should even in such cases rest on a corporal and have the usual lamp burning before them.

(*d*) Several decrees of the Congregation of Rites enjoined on the priest in charge of the church or oratory personally to keep the key of the tabernacle; the present law only holds him responsible for it imposing upon him the grave obligation of taking care of it personally or through another person.

119. 3°. *Pyx or Ciborium.* (Can. 1270.) The early Christians when they took the Blessed Sacrament to their homes kept it in a casket which St. Cyprian calls *arca.* (De Lapsis, 132.) Later on we find various names applied to the vessel which served the same purpose in churches: *turris, pyxis, capsa, columba chrismale, cuppa, ciborium.*

The Code calls it *pyxis* and demands that it be made of solid, suitable material, kept clean and well closed with its lid covered with a white, fittingly ornamented, silk veil.

As material for the pyx the Congregation permits copper if gilded but not glass; neither does it consider fear of theft as an excuse for using such common vessels for the reservation, still less

for dispensing with the ciborium altogether and leaving the sacred particles on the corporal.

II. WORSHIP OF THE BLESSED SACRAMENT.

(Can. 1271–1275.)

120. 1. *Sanctuary Lamp.* In accordance with a tradition dating from the thirteenth century or earlier, at least one lamp must burn day and night without interruption before the Blessed Sacrament in the tabernacle.

The common law prescribes for this lamp regularly olive oil or beeswax, but if olive oil can not be obtained or not without great difficulty the Ordinary of the place has authority to allow when he deems it opportune, the substitution of some other oil, vegetable oil as far as possible but also mineral oil if necessary, for example kerosene. (S. R. C., Sept. 16, 1881, Leaven.)

In 1916 considering the conditions brought on by the war or other causes and the great difficulty of procuring olive oil, in some countries at least, the Holy See empowered local Ordinaries where those conditions and that serious difficulty existed to use in place of olive oil for the sanctuary lamp other oils, vegetable oils if possible, or beeswax pure or mixed with other elements or finally even electric light. (S. R. C., Feb. 23, 1916; A. A. S., 1916, p. 72; Canoniste, 1916, p. 142.) Should the same conditions continue in some countries the Ordinaries might, no doubt, still use this power. The Code has not withdrawn temporary concessions which partake of the nature of a particular Indult. (Blat, n. 139.)

In all those cases the Ordinary not the rector

of the church must pronounce on the lawfulness or advisability of burning other than olive oil.

121. 2. *Renewal of the Sacred Species.* (Can. 1272.) Churches or oratories obliged or authorized to reserve the Blessed Sacrament should always keep a sufficient number of consecrated particles to satisfy the desire of the faithful for Holy Communion.

But neither these particles nor the Host necessary for Exposition or Benediction should remain too long in the tabernacle. When they grow old they should be consumed and replaced by fresh ones.

An ancient synod of Tours asks for the renewal of the sacred species every three days. Generally particular Councils required only weekly or at least fortnightly renewal. (Martène, l. c., art, 3, ix.) The Ceremonial of Bishops and several decrees of the Congregation of Rites urge weekly renewal. The Second Plenary Council of Baltimore endorsed this rule for the United States and declared it strictly and rigorously binding on all priests. (n. 268.)

The Code simply prescribes first the use of recently made particles, that is, according to St. Charles Borromeo, not more than twenty days old, then their sufficiently frequent renewal to remove all danger of corruption; for more precise directions it refers to the instructions given by local Ordinaries which it recommends to follow with utmost exactness.

122. 3. *Devotion to the Holy Eucharist.* (Can. 1273.) The legislator asks all who have something to do with the instruction of the faithful to neglect no opportunity of exciting in their hearts

devotion to the Blessed Sacrament and to encourage particularly assistance at Holy Mass and visits to Our Lord in the tabernacle not only on Sundays and Holy days of obligation but also as often as possible on week days.

To facilitate this practice of frequent visits churches that reserve the Blessed Sacrament particularly parish churches should remain open to the faithful at least a few hours every day. This does not apply to semi-public chapels intended for the use chiefly if not exclusively of a community. It suffices that these remain accessible to the members of that community.

123. 4. *Exposition and Benediction of the Blessed Sacrament.* (Can. 1274.) 1°. *Nature and forms.* Although closely connected in our present practice the Exposition and Benediction of the Blessed Sacrament differ from one another in their nature and origin. The former consists essentially in exposing the Blessed Sacrament with proper solemnity to the view of the faithful that they may see and worship It. The latter implies of itself only the blessing bestowed upon the people by performing the sign of the Cross over them with the Blessed Sacrament.

The Code like liturgists distinguishes a solemn or public, and a private, Exposition; it calls solemn the Exposition with the monstrance in which the Sacred Host itself is visible to the congregation, and private the Exposition with the pyx or ciborium. For this one the door of the tabernacle is opened and the ciborium moved forward if necessary in order that the people may see it but without uncovering it or taking it out of the tabernacle.

124. 2°. *Origin.* The practice of Exposition apparently grew out of the rite of the Elevation of the Sacred Host after consecration introduced in the course of the thirteenth century probably as an external manifestation of faith in the independent efficacy of the sacramental words pronounced over the bread which Peter Cantor and Peter Comestor denied. (Catholic Encyclopædia, Elevation, Exposition; Adrian Fortescue, The Mass, ch. viii § 5, Longmans, London, 1913; Dictionnaire de Théologie Catholique, Elévation.)

Before long people came to regard this looking upon the body of the Lord as a very meritorious act and a privilege which they wished to enjoy on other occasions also. Under the influence of this sentiment, in the Corpus Christi processions introduced about the year 1246 the custom gradually prevailed of carrying the Blessed Sacrament in monstrances which left the Host visible. We read in the fourteenth century of sick persons who when unable to receive the Holy Viaticum had the Blessed Sacrament brought to them that they might at least gaze upon it. The *Septilinium* of Blessed Dorothea of Prussia who died in 1394 refers to certain churches which kept the Blessed Sacrament all day long in a transparent monstrance; others particularly in some regions of central Europe in the fifteenth century reserved the Sacred Species in a distinct, prominent tabernacle called sacrament house, behind a metal door which allowed a view of the interior; in other churches it was a common practice to expose the Blessed Sacrament during the Mass. Synods of this period passed numerous decrees against that

continual and informal Exposition which tended to lessen reverence for the Holy Eucharist. They seem to have succeeded in eliminating abuses and moderating the zeal of popular devotion for the Council of Trent has only to approve and encourage the practice of solemnly carrying the Blessed Sacrament in procession and exposing It to public adoration.

After the Council, under the direction of the proper authority and the influence of such men as St. Charles Borromeo and St. Philip Neri, devotion to the Blessed Sacrament in the form of Exposition continued to grow as evidenced by the institution of the Forty Hours' Adoration, the Perpetual Adoration, and various other services involving Exposition. (Wernz, iii, n. 552.)

We find no trace of a blessing imparted with the Sacred Host till the fifteenth century and then it appears in connection with the Corpus Christi procession. In the sixteenth century St. Charles Borromeo prescribes the blessing with the ciborium after administration of the Holy Viaticum; in the seventeenth liturgical books and decrees require the blessing after every ceremony of Exposition. (Wernz, n. 556.)

The present popular service known as Benediction of the Blessed Sacrament seems to have been originally an exercise of devotion consisting of prayers and hymns chiefly in honor of the Blessed Virgin, to which in the course of the sixteenth or seventeenth century Christian piety added Exposition and Benediction of the Blessed Sacrament. (V. de Buck, Précis Historique, xxi, 59, Brussels, 1872; Catholic Encyclopædia, Benedic-

tion; Thurston, The Month, June–September, 1901.)

125. 3°. *Present Law.* (*a*) The common law allows Exposition with the ciborium in any church or oratory authorized to reserve the Blessed Sacrament, for any just cause and without need of permission from the Ordinary.

(*b*) It permits public Exposition, that is, with the monstrance, in all churches on the Feast of Corpus Christi and every day within its octave, during Mass and Vespers.

We find here no mention of oratories but as under the former discipline the Ordinary may, at least probably, extend to all public or semi-public chapels the privilege here granted to churches.

(*c*) For public Exposition at any other time permission from the local Ordinary is required even in churches belonging to exempt religious and he should give it only for a just and grave, particularly public, cause.

By decree of Aug. 20, 1885 Leo XIII not only permitted but ordered the solemn Exposition and Benediction of the Blessed Sacrament every day of October as part of the Rosary devotions when held in the evening in all parish churches and others designated by the Ordinary. This ordinance remains in force after the Code.

The Congregation of Rites does not admit the validity of custom against legislation regarding Exposition but this probably does not apply to centenarian or immemorial customs. (Cappello, De Sacramentis, i, n. 417.)

The local Ordinary may give the needed authorization for any just and grave, not simply

just and reasonable, nor necessarily very grave, cause. Even reasons of a private character may fulfil this condition as the Congregation of Rites explicitly admitted in some cases and the Code clearly implies. Usually grave reasons are of a public nature, that is, affecting not merely one individual but the community large or small, as, for example, the wish to obtain rain, favorable weather, the cessation of war, famine, pestilence, an increase of piety in a parish, the correction of general abuses, etc.

Some authors would consider any just and reasonable cause as sufficient for Exposition of a short duration such as required for a *triduum,* a *novena,* an ordinary Benediction (Badii, Institutiones Juris Canonici, II, 492; Cocchi, o. c. n. 104) or even they would not regard it as solemn Exposition strictly so called. (Battestini, Ephemerides Liturgicæ, Nov. 1921, p. 465.) The Commission of Interpretation considers it as solemn Exposition. (March 6, 1927.)

For the dioceses of the United States the Second Plenary Council of Baltimore (1866, n. 375) authorized Exposition and Benediction of the Blessed Sacrament in all churches and chapels of pious communities on all Sundays and Holy days of obligation, on all feasts of the first or second class, twice a week during Lent, during missions or the Forty Hours, on the Feast of the Sacred Heart and on other days designated by the Ordinary or with his special permission but not without it except for some particular privilege.

These permissions may not be presumed, at least not outside of extraordinary and urgent cases.

Tacit permission suffices. Hence if in a diocese the custom existed pretty generally of celebrating the months of May or June or others with special devotions and the Benediction of the Blessed Sacrament every day the mere silence of the Ordinary who must know of the practice would contain sufficient permission for it. (Cocchi, l. c.)

(*d*) The ordinary minister of exposition and reposition of the Blessed Sacrament is the deacon as well as the priest but the latter alone may give the benediction. The deacon, however, may impart the blessing with the ciborium when for a grave reason and the permission of the Ordinary or the pastor he has administered the Holy Viaticum.

126. 5. *Forty Hours' Devotion.* (Can. 1275.) 1°. *Origin.* The practice begun in the thirteenth or fourteenth century of reserving with some solemnity the Blessed Sacrament in the Sepulchre the last days of Holy Week received in some places the name of Prayer of the Forty Hours because of its usual duration corresponding to the length of time that the body of Our Lord remained in the tomb. This seems to have suggested a little later when Exposition of the Sacred Host had become more frequent the idea of keeping the same vigil of forty hours before the Blessed Sacrament solemnly exposed on other days particularly on occasions of great calamity or peril.

According to good authorities this devotion was introduced by a certain Antonio Bellotto in Milan about the year 1527; by Brother Buono called the Hermit at Cremona in 1529 and by St. Philip

Neri in Rome shortly afterwards. Father Manare S.J. at Macerata (1548) and St. Ignatius himself in Rome advocated particularly solemn Exposition during the carnival as an act of expiation for the sins committed at the time. (Catholic Encyclopædia, Forty Hours.)

A Milanese writer of the sixteenth century refers to the practice started in May, 1537 of exposing the Blessed Sacrament in one church after another of his city. He does not name the originator of this novelty but the best available evidence points to the Capuchin Father, Joseph Piantanida da Fermo. Two years later Paul III approved "this pious institution" and enriched it with indulgences.

In 1592 Clement VIII (Graves et diuturnæ, Nov. 25) seeing the numberless dangers that threatened Christendom announced his decision "to establish in the city of Rome an uninterrupted course of prayer by the observation in the different churches of the devotion of the Forty Hours in such an order that at every hour of the day and night, the whole year round, the incense of prayer would ascend without interruption before the face of the Lord." Clement XII in 1731 issued very elaborate rules on this subject in the *Instructio Clementina* which remains in force to the present day at least in Rome.

The Milanese and Roman form of Forty Hours approved by Clement VIII spread to many other churches but some retained and have still the Forty Hours of the carnival, that is, solemn Exposition during the two days that precede Lent and for the rest of the year what they call Perpetual Adoration: each parish of a diocese has its

appointed day for Exposition of the Blessed Sacrament during the greater part of the day. (Thurston, Lent and Holy Week, 110–148.)

127. 2°. *Present Law.* All parish churches and others which habitually reserve the Blessed Sacrament must on the days approved by the local Ordinary hold every year the Forty Hours' Devotion with all possible solemnity.

If in some place special conditions made it impossible to carry out the full ceremonial without grave inconvenience or did not permit to do so with all the reverence due to so august a sacrament the local Ordinary should see to it that every church has particularly solemn Exposition for at least a few continuous hours on the appointed days.

The Code does not prescribe in detail the rite of this devotion; we have complete and authoritative directions in the *Instructio Clementina.* They do not have, however, strictly binding force outside of Rome except as conditions for gaining the indulgences unless the Holy See has disposed otherwise. For the United States a decree of the Propaganda (Jan. 24, 1868) permitted the suppression of the nightly Exposition and also of the Procession without loss of indulgences. (II Plen. Balt., n. 376.)

TITLE XVI

CULT OF THE SAINTS, SACRED IMAGES AND RELICS

(Can. 1276–1289.)

(Wernz, iii, 358–392; Catholic Encyclopædia, Beatification and Canonization; Vermeersch, o. c., n. 601; Blat, o. c., n. 144.)

In an introductory canon the legislator recalling the dogmatic foundation of the provisions which follow affirms the lawfulness and utility of the invocation of Saints and of the honors paid to their relics or images; he insists particularly on the necessity for all the faithful of filial devotion to the Blessed Virgin. Then he treats successively of the worship of Saints, of Images, and Relics.

I. WORSHIP OF THE SAINTS. (Can. 1277–1278.)

128. 1. *Public Worship of Saints.* 1°. We may worship privately any person of whose eternal salvation we have a reasonable certainty but we pay the honor of public worship as defined above (Can. 1256) only to Saints beatified or canonized by the Church. The conditions, formalities, and effects of beatification or canonization are exposed

in detail in the Second Part of the Fourth Book of the Code.

2°. Beatification does not entitle to the same honors as canonization. To a canonized saint we owe the cult of *dulia;* to one beatified we may pay that honor only with certain restrictions. Canonization as a final and infallible decision imposes the obligation of worship, beatification implies only permission for it and a limited one.

To the canonized Saints we may pay in any place all the honors included in the cult of *dulia;* to the Blessed homages constituting acts of public worship can be rendered only in certain places or by certain moral bodies as specified in the Brief of Beatification or in subsequent decrees. The same documents and legitimate liturgical custom determine the kind of religious honors that may be paid to them in those places and by those persons. Permission to say the Mass or Office of one of the Blessed implies also permission to have an altar erected in his honor in the church or to have his image exposed to public veneration but not vice versa.

129. 2. *Patron Saints.* (Can. 1278.) Nations, provinces, dioceses, confraternities, religious families, and other places or moral persons may have their special Patron Saints, the Church even encourages this practice under certain conditions. According to a decree of the Congregation of Rites approved by Urban VIII (March 23, 1630) and implicitly sanctioned by the Code, the Patron, for example, of a diocese must be chosen by the people, the clergy, and the Ordinary and approved by the Holy See through the Congregation of Rites. This does not necessarily require formal

elections; the people and clergy may manifest their wishes by means of signed petitions or through duly accredited representatives. The Saint becomes really Patron after approval by the Holy See and he may lose his title only by the same intervention.

The Patron Saint, for example, of a parish differs from the titular of a church as also from the special protector given to a certain work at the request of the Ordinary or of a society. Thus Pope Leo XIII constitutes St. Thomas Patron of Catholic Schools, St. Camillus Lellis, of hospitals and the sick, St. Vincent de Paul, of all charitable organizations.

Any Saint either formally canonized or whose name appears on the Roman Martyrology may be chosen as a Patron, but the Blessed may not without special authorization from the Congregation of Rites.

II. HOLY IMAGES. (Can. 1279–1280.)

130. 1. *Approved forms.* 1°. Without the approval of the local Ordinary no one, neither the rector of the church, nor a prelate, nor a religious superior may place an image of unusual character in a church whether exempt or not, or in any other sacred place, chapel, or cemetery consecrated or solemnly blessed. All pictures really new in subject or form need this approval; the pictures, for example, of the Sacred Heart or of Our Lady of Lourdes needed it when first introduced.

2°. The local Ordinary should not approve for public veneration sacred images which depart from the types consecrated by ecclesiastical cus-

tom. There exist traditional representations of the Divine Persons, the Holy Family, the Sacred Heart, etc.; they have their symbolic, definite meaning for the faithful whom novelties tend to confuse. Benedict XIV reprobated pictures which represented the Holy Spirit in the form of a young man instead of the traditional dove. The Church does not use for public worship pictures of the Sacred Heart with the Heart alone; ordinarily the Blessed Virgin carries the Divine Child on her arm but St. Joseph leads Him by the hand. (Ferraris, Bibliotheca, n. 55.)

3°. The Ordinary must not, for any purpose, permit the exhibition in churches or other sacred places of pictures which convey false dogmatic notions or lack propriety or decency or, although perhaps correct in themselves, might lead the ignorant into error.

131. 2. *Blessing.* No rule prescribes the solemn blessing of pictures exposed for public veneration but if they are to receive one, the Ordinary alone has authority to impart it personally or through any priest he may choose.

3. *Restoration or Alienation.* (Can. 1280, 1281.) 1°. When a picture or statue of great value exposed to the veneration of the people in a church or chapel needs repairs, nothing should be done without consulting the Ordinary and obtaining his consent in writing. The Ordinary himself, before granting such a permission, should take the advice of prudent and skilled men.

A picture may possess great value because of its antiquity, its artistic merits, or the devotion of the people.

2°. Ecclesiastical law does not permit the

alienation of such images without authorization from the Holy See, nor their permanent transfer to another church.

III. CULT OF RELICS. (Can. 1281–1289.)

132. 1. *Nature and Kinds.* In its strict sense the term relic would apply only to the body or part of the body of a beatified or canonized person, but in a broad sense it includes also objects particularly connected with the Saint like his clothes, articles which he used or which touched his body, the house he occupied, etc.

Ecclesiastial law distinguishes two kinds of relics: the major or more important, *insignes,* and the minor or less important ones. As major relics the Code gives: the entire body of the Saint, the head, arm, forearm, heart, tongue, hand, leg, and that part of the body in which he suffered martyrdom provided it be entire and not too small.

All other relics belong to the minor class, for example, the shinbone, thighbone, foot with some toes, bones of the head, as declared by the Congregation of Rites. (June 27, 1899.)

2. *Alienation and Preservation.* 1°. For the valid alienation or perpetual transfer to another church of a major relic the permission of the Holy See is necessary. The same principle holds for relics of minor importance in themselves materially but highly esteemed and venerated by the people; it does not for ordinary minor relics.

2°. Major relics of beatified or canonized persons may not be kept in private houses or oratories without the express permission of the Ordi-

nary of the place. Should a private person have in his possession any such relic he should obtain that permission or dispose of the relic according to the directions of the Ordinary.

Private persons may keep minor relics in their houses and carry them about provided they do so with proper respect and reverence.

133. 3. *Authentication.* (Can. 1283–1286.) 1°. Ecclesiastical law does not permit the public veneration of relics in any, even exempt, churches unless the genuineness of these relics be guaranteed by an authentic document from one of the Cardinals, the Ordinary of the place or some ecclesiastic delegated to that effect by Apostolic Indult. The Vicar General does not possess authority to authenticate relics without special mandate.

2°. Should the Ordinary acquire the moral certainty of the spuriousness of certain relics he should prudently withdraw them from popular devotion.

3°. If through civil disturbances or other causes the authentication document perishes or disappears, the public veneration even of relics known as genuine ought to cease till the local Ordinary decides to allow it in spite of the loss of this official and legal evidence of their authenticity. The Vicar General can not grant this permission without special mandate.

4°. In the case of old relics long honored by the faithful but for which there exists no official proof of authenticity, the Church allows the continuation of the ancient cult, unless conclusive evidence would demonstrate their spurious character.

Their antiquity which renders them more precious makes it impossible or very difficult positively to prove their genuineness, and the persevering devotion of the people probably encouraged and sanctioned by favors received gives them a religious value independent of their origin.

5°. Local Ordinaries must then ascertain, as far as they can, the genuineness of relics approved for religious worship and may, therefore, encourage respectful criticism or scientific investigation along those lines. But they should not permit the public discussion of these questions and let anyone raise doubts about the authenticity of sacred relics merely on the strength of arguments based on conjectures, pure probabilities or preconceived notions.

This is particularly out of place in sermons, books, periodicals, or pamphlets intended to foster piety rather than learned research; it would deserve specially severe condemnation if done in a tone or terms savoring of contempt or derision.

134. 4. *Exposition of Relics.* (Can. 1287.) 1°. In order to avoid frauds, thefts, or profanations, relics, when exposed, should be enclosed in a case and sealed ordinarily with the seal of the authenticating prelate. Liturgical rules do not permit to place them over the tabernacle.

2°. On account of the special worship due to them, relics of the true Cross should not be presented to the veneration of the people in the same case with relics of Saints, but always in a distinct one.

3°. Without special Indult relics of beatified persons may not be carried in procession, nor may they be exposed in churches or public chapels ex-

cept in those that have obtained from the Holy See permission to celebrate the feast of these Blessed with Office and Mass.

5. *Relics of the True Cross.* (Can. 1288.) Because of the scarcity and special sacredness of these relics, in order to prevent them from becoming scattered and to keep them as far as possible in the hands of prelates, the Church provides that should a Bishop's pectoral Cross contain some of them as occurs not infrequently, these become at his death the property of his cathedral church which must transmit them in due time to his successor. If the Bishop had several cathedral churches because he presided over several dioceses, for example, as Apostolic Administrator, the relics should go to the cathedral church of the diocese in which he died, and if he died outside of his own territory, to the church of the diocese in which he dwelt last.

This rule concerns only the relics themselves; the prelate remains free to dispose of the Cross once they are taken out. (March 25, 1889.)

135. 6. *Provisions against Sale or Profanation of Relics.* (Can. 1289.) 1°. The Divine law itself forbids the sale of sacred relics as a form of the crime of simony, and the Church enjoins on local Ordinaries, Vicars Forane, parish priests and others with the charge of souls, great care to prevent the sale of relics particularly of those of the Holy Cross, and not to let them pass into the hands of non-Catholics. As this may take place particularly on the occasion of hereditary succession or of general sale or public auction special vigilance would then be called for.

As declared again by Leo XIII, the faithful

may not buy relics from a trader even in order to redeem them (Dec. 21, 1878; Coll. P. F. n. 1505) because of the danger of simony and of co-operation in impious traffic involved in such a transaction. If they find relics for sale they should report the matter to the Ordinary who will give the necessary directions. Theologians explain that he may permit the offer of money to the owner not as a price for the relics but as the condition for preventing their impending profanation. In urgent cases the authorization might be presumed. (Génicot, i, n. 228, iv, 40.)

2°. Rectors of churches and all concerned in the care of sacred things must watch faithfully over relics and see that they suffer no profanation, that they do not perish through the negligence of men and that they are kept with all becoming care and respect.

TITLE XVII

SACRED PROCESSIONS

(Can. 1290–1295.)

(Martène, o. c., L. iv, c. 27, 29; Wernz, iii, n. 554, 565; Catholic Encyclopædia, Litany, Processions; Dictionary of Christian Antiquities by Smith and Cheetham, Litany, Processions.)

I. NATURE, ORIGIN AND SPECIES.

136. 1. By sacred processions we understand here solemn supplications made by a group of Christians marching in an orderly manner from one sacred place to another, under the leadership of the clergy for the purpose of exciting devotion, commemorating God's benefits, thanking Him for His favors, imploring His assistance.

A procession, then, as distinct from a parade or a civic demonstration, requires the presence of the clergy in their official capacity, the participation of a fairly large number of people marching from one sacred place to another and a pious purpose.

In the ritual of almost every form of religion, processions occupy an important place. Even in the times of persecution Christians had their funeral processions which the law generally tolerated.

After the Edict of Milan they naturally become more frequent. We read of solemn processions for the transfer of the body of martyrs and then of public supplications on the occasion of great calamities or urgent needs, in times of pestilence, famine, war, etc. In Rome Pope and people would go in procession to the different churches or stations to celebrate the sacred mysteries. In 590 on the occasion of a pestilence which ravaged Rome St. Gregory the Great gave special solemnity to the Litany or procession of the 25th of April, on which day the Romans used to celebrate the feast of their goddess Robigo with much external display. About a century earlier (477) on account of earthquakes and other scourges then prevalent St. Mamert had established the procession of the three Rogation days in Vienne from which it soon spread through the rest of Gaul and of Europe. During the Middle Ages practically every church in England, for example, observed the rogations; as every year the people passing out of the church precincts wound their way about streets or country roads of the parish they sang the litany of the Saints praying particularly for God's blessings on the fields and crops. This practice of going around the parishes on Rogation days or as they were also called "Gang days" lasted far into the seventeenth century in England where according to some historians it served also to impress upon the memory the boundaries of the parish and for this purpose the custom existed in several places of flogging boys at the "boundaries that they might remember the spot in old age."

The Capitularies of Charlemagne and synods

of the ninth century (Nantes, 900) prescribe a weekly procession as they command each priest every Sunday before Mass to bless water and sprinkle the people as they come in and make the round of the yard or cemetery of the church with the processional crosses sprinkling it with the holy water and praying for the souls of them that rest therein. This practice still exists in some countries.

137. 2. *Kinds.* Some processions are called ordinary because they recur regularly every year at stated times as determined by liturgical rules or local custom. The Roman Ritual mentions seven of them: the processions of the Purification or Candlemas, Palm Sunday, St. Mark's day, the Rogation days, and Corpus Christi. In some places particular law or custom permits or prescribes others, for example, a procession of the Blessed Sacrament within the church once a month; a procession in honor of the Blessed Virgin also once a month within the church and also outside when the season permits, the short procession before the parochial Mass every Sunday, etc.

The Ritual calls extraordinary, processions held on special emergencies, to ask for rain or fine weather, to drive away storms, plague, famine, or war; processions on occasion of any calamity, or by way of solemn thanksgiving or for the transfer of important relics.

II. CORPUS CHRISTI PROCESSIONS. (Can. 1291.)

138. 1. At the request of Blessed Juliana and in consequence of her visions or revelations the

Bishop of Liège in 1264 established a special feast in honor of the Blessed Sacrament. The Papal Legate Hugo of St. Cher approved it in 1253; Popes Urban IV in 1264, Clement V and the Council of Vienna in 1311 and John XXII in 1318 confirmed and extended it to the whole Church. Their decrees contain no mention of the theophoric procession but some churches had already begun to hold it and before many years it had spread everywhere and become one of the most popular and most solemn religious celebrations of the year.

Protestants abolished it wherever they came in power condemning it as a superstitious practice but the Council of Trent defended it against their attacks and maintained it as a good and meritorious homage to Our Lord in His Sacrament. (Sess. xiii, c. v, can. 6.)

2. The Code supposes the Corpus Christi procession prescribed by liturgical law and only enacts a few rules regarding its celebration referring us for the details to the Ceremonial of Bishops and to the Ritual.

(*a*) Confirming the former discipline the present law commands all the churches of the same city or town, on the Feast of Corpus Christi, to join the principal church in a common, solemn ceremony and have only one procession through the streets on that day, unless a custom to the contrary had existed in the place from time immemorial or special circumstances would make it advisable in the Ordinary's estimation to permit several processions.

In this general procession must take part all the secular clergy, the religious communities of

men, even those that enjoy exemption, and the confraternities of laymen. The only ones whom the law does not oblige to attend are regulars who live in perpetual and strict enclosure and those who dwell more than three thousand yards from the place. The exception made here in favor of regulars applies probably to all religious under the same conditions. Others are dispensed by special Indult or by long custom.

(*b*) The parishes and churches, even those belonging to regulars that did not have the procession on the day of the Feast of Corpus Christi may hold one of their own, without obligation of doing so, during the octave.

In cities with several churches, in order to avoid confusion and possible conflicts of jurisdiction the Ordinary of the place should determine the day and the hour and also the route for each procession; all should conform to his directions except for some special privilege. Thus by special concession of St. Pius V confirmed by Clement VIII and Benedict XIII the Dominicans may hold their procession on the Sunday within the octave or the Sunday after where the solemnity of the feast and the procession are transferred to the Sunday as in the United States. (S. R. C., Feb. 28, 1912.)

III. EXTRAORDINARY PROCESSIONS. (Can. 1292.)

139. The Ordinary of the place may, after taking the advice of his chapter or of his consultors, for a grave reason of a public nature prescribe special processions, for example, in thanksgiving for a national benefit, on the occasion of the transfer

of important relics, in reparation for a public scandal, etc.

All persons bound to attend the Corpus Christi procession are obliged to attend the extraordinary, as also the other ordinary, ones established by law or custom.

IV. RELIGIOUS AND PROCESSIONS. (Can. 1292.)

All, even exempt, religious need a special permission from the Ordinary of the place to hold processions outside of their churches and cloisters. Regulars, not other religious, however, may as said before hold the Corpus Christi procession outside of the church during the octave without episcopal authorization.

Without stating it explicitly the law implies that regulars may hold processions within their churches and cloisters, and a decree of the Congregation of Rites (Jan. 21, 1690) explained that if they had no cloister the procession might go around the church provided it would keep close to the walls. This interpretation retains, no doubt, its full value.

V. PARTICULAR PROCESSIONS. (Can. 1294.)

140. Neither pastors nor any other persons in the diocese, v.g. chapters or confraternities, have authority without permission from the local Ordinary to introduce new processions, nor to transfer those already established, still less to suppress them altogether. The Ordinary may make those changes as long as they do not touch the liturgical or common law.

All clerics attached to a church must attend the processions proper to that church and those prescribed by general law as said before.

VI. ORDER AND DECORUM IN PROCESSIONS.

(Can. 1295.)

Ordinaries ought to eliminate all abuses that might have crept in and see that processions remain orderly and that all observe therein the modesty and reverence becoming such pious and religious acts.

They must particularly settle in detail all questions of precedence which in the past gave occasion to so many disputes.

Ancient decrees refer to dancing and fighting, eating and drinking as abuses which Ordinaries should prevent or correct.

The Ritual directs ecclesiastics to assist at processions dressed in surplice or other sacred vestment, the head uncovered with hats except in cases of rain, marching two by two, each one in his proper place, so absorbed in prayer that refraining from all laughter, from conversations, and vague looking about their attitude may serve as an invitation to the faithful to join in the pious and devout supplication.

TITLE XVIII

CHURCH FURNITURE

(Can. 1296–1306.)

(Gasparri, De SS. Eucharistia, n. 656–787; Many, Prælectiones de Missa, c. viii; Wernz, iii, 512–523; Cappello, Tractatus canonico-moralis de Sacramentis, i, n. 797–813; Vermeersch, o. c., n. 623; Blat, o. c., n. 166; Wapelhorst, Compendium Sacræ Liturgiæ, C. I.)

141. The term *Sacra Suppellex,* sacred utensils, church furniture, designates here, primarily, the sacred vestments, sacred vessels, and various utensils required for the exercise of divine worship, chiefly for the offering of the Holy Sacrifice and the administration of the sacraments. It may include also other articles of church furniture not so closely connected with religious services still related to them in different degrees such as altar or church decorations, the pulpit, the confessional, the seats for worshippers, etc.

I. CUSTODY, MATERIAL AND FORM; MAINTENANCE OF CHURCH FURNITURE. (Can. 1296–1297.)

1. *Custody.* Those who have charge of objects serving for divine worship must look after them carefully, keep them in the sacristy or other safe and decent place and not let anyone use them for profane purposes.

This applies in a particular manner to sacred vessels and vestments consecrated or blessed as demanded by liturgical laws and used for public worship. Some authors would not condemn the use for profane but becoming purposes of articles neither consecrated nor blessed like candelabra or carpets and for those that have received a blessing or consecration they consider it lawful, under the present law, in spite of the greater severity of ancient canons, to turn them to other uses or sell them once they have lost their form and consequently their blessing or consecration. (Gennari, Consultations, canoniques, Cons. xxxii.)

As a safeguard against possible losses the law commands all administrators of church property to make a complete and exact inventory of all the things under their care, particularly of sacred vestments and utensils, and have it always in the archives. (Can. 1522.)

142. 2. *Material and Form.* Liturgical rules and ecclesiastical tradition have determined the material required for sacred vestments or vessels and their form. They leave some latitude but within those limits they should be strictly adhered to, with due regard also, as far as possible, for the laws of Christian art.

3. *Maintenance.* Those upon whom devolves in accordance with the rules laid down in Canon 1186 the obligation of repairing a church must also supply the vestments, sacred vessels, and utensils necessary for divine worship and keep them in proper condition, except for some special provision by which, for example, someone else would have assumed that burden or other funds would be available for the purpose.

II. TRANSMISSION OF SACRED UTENSILS THAT BELONG TO CARDINALS, BISHOPS OR BENEFICED CLERICS. (Can. 1298–1301.)

143. 1. *Cardinalitial Furniture.* Pope Urban VIII giving the force of law to a custom which existed from time immemorial enacted for the transmission of church furniture coming from Cardinals' private chapels measures which the Code has maintained substantially (Æquum est July 19, 1622). They concern only Cardinals who habitually reside in Rome even though they be Bishops of one of the suburban sees or Abbots *nullius,* not Cardinals who have their domicile elsewhere.

(*a*) Roman Cardinals may dispose freely of their rings and pectoral crosses including the relics which they contain.

(*b*) All the other sacred furniture and everything in their possession destined in a permanent manner for divine worship they may give by donation *inter vivos* or by last will to some church or public oratory, to a pious place or to an ecclesiastic or religious but not to secular institutions or to private lay persons.

The legislator expresses the wish if they take advantage of this permission that they leave at least part of their furniture to the churches of which they held the title, administration, or trust.

(*c*) If they have not disposed of it the sacred furniture at their death goes to the papal treasury. It does not matter how they had come in possession of it, whether they had bought it with personal or ecclesiastical funds.

144. 2. *Episcopal Utensils.* (1299.) (*a*) A residential Bishop even though vested with the

cardinalitial dignity may freely dispose of his rings and pectoral crosses with their relics except as said before the relics of the true Cross; and he may likewise dispose of any of the sacred furniture of which there is valid proof that he did not buy it with church money and that it had not become church property afterwards. At his death it goes to his heirs. All his other sacred furniture accrues to his cathedral church.

(*b*) If the deceased Bishop ruled two or more dioceses either as titular Bishop after canonical union or as perpetual administrator, each diocese having its own cathedral, the sacred furniture he leaves becomes the property of the cathedral of that diocese which paid for it if there is sufficient evidence to prove that one of them stood the whole expense.

In the absence of such evidence either these dioceses put all their revenues together so as to constitute only one common fund or they kept them distinct and had separate accounts; in the first case the sacred furniture should be divided equally between their cathedral churches, in the second it should be divided among them in proportion to the amount of revenue the Bishop derived from each diocese and the length of time he governed each one of them.

(*c*) Bishops must make an inventory in authentic form of all their sacred vestments and utensils showing the exact date of acquisition and pointing out distinctly those they have acquired not with church funds but with personal money or by donation otherwise all will be considered as Church property.

145. 3. *Clerical Furniture.* (Can. 1300.) The

rules laid down in the preceding canon regarding Bishops apply also to clerics who have a secular or religious benefice in a church. The sacred vessels or vestments found in their possession at their death accrue to their church except for proof that they were personal property.

4. *Execution of These Provisions.* (Can. 1301.) Cardinals, residential Bishops, and other beneficed clerics ought to provide for the faithful execution of these canonical prescriptions concerning transmission of sacred furniture, in a last will or other document drawn up in strictly legal form so that it may have effect also in civil courts. For this purpose they must in due time and in proper legal form appoint a person of good character, in priestly orders (Can. 380) who in the event of their death will take possession not only of the sacred furniture but of books, documents, and other objects found in their residence and belonging to the church which he will deliver to the rightful claimants.

The Councils of Baltimore following Instructions from the Holy See had enacted similar rules for the United States. (S. C. de Prop. F., Dec. 15, 1840, Coll., n. 916; ii, Plen. Balt., 1866, n. 191; iii, Plen. Balt. 1884, n. 269–272.)

III. CARE OF CHURCH FURNITURE. (Can. 1302.)

146. Rectors of churches and all other persons, lay or cleric, who have charge of sacred vessels, sacred vestments, and other articles serving for divine worship must sedulously look after them, preserve them from deterioration, and keep them in a perfect state of cleanliness.

IV. SACRED FURNITURE SUPPLIED BY THE CHURCH. (Can. 1303.)

1. The cathedral church must furnish gratuitously the sacred vestments, sacred vessels, and other objects the Bishop needs, for the celebration of Mass and other pontifical functions, whether he celebrates privately or publicly, whether in the cathedral itself or in another church of the episcopal city or of its suburbs not, however, when he officiates in other churches outside of those limits.

2. Regularly particular churches should furnish visiting priests with all they need to say Mass free of charge. In the case of a poor church, however, the Ordinary may give permission to demand a moderate fee from priests who say Mass therein for their own convenience. This would serve to defray the expense of bread and wine, of the sacred utensils and other things necessary for the celebration of the Holy Sacrifice.

This concession is made only in favor of poor churches and they may exact a compensation only from priests who use their sacred utensils for their own convenience not for that of the church.

According to an ancient rule not explicitly renewed by the Code but probably still in force priests who wish habitually to say Mass in a church not their own should bear the expense for the bread and wine, the candles, the use of the vestments, etc. (Many, De Missa, n. 136–138.)

The Bishop alone, not the Vicar Capitular, nor the Vicar General without special mandate has authority to determine the fee which poor

churches may demand for the use of the vestments and sacred utensils, and no one not even exempt religious may exact more. The Bishop should fix this fee in the diocesan synod if possible, or else with the advice of the chapter or of diocesan consultors.

V. BLESSING AND CONSECRATION OF SACRED FURNITURE. (Can. 1304.)

147. 1. *Consecration.* Before serving for the Holy Sacrifice the chalice and paten must be consecrated in the form prescribed by the Pontifical. Mere use would not make up for the want of formal consecration as some authors used to hold.

The ordinary ministers of these consecrations are Bishops and also even though they may not have the episcopal power of order, Cardinals, Vicars, and Prefects Apostolic, Abbots, and Prelates *nullius*.

Other ecclesiastics may receive this power from the Holy See or from local Ordinaries authorized to delegate it. Bishops can not delegate it to priests without special Indult. (Can. 1147.)

2. *Benediction.* 1°. Liturgical rules require a special blessing for the tabernacle, the corporal, pall, and altar cloths; for the amice, alb, stole, maniple, chasuble, and probably cingulum. They permit but do not require it for the ciborium, lunula, ostensorium, tunic, dalmatic, cope, surplice, purifier.

2°. The following persons can give these blessings prescribed by rubrics:

(*a*) Cardinals and all, even titular, Bishops can give them for any church or chapel;

(*b*) Local Ordinaries not endowed with the

episcopal character can give them for the churches and oratories in their own territory, not excepting exempt ones;

(*c*) Pastors, for the churches and chapels located within the limits of their parish and rectors of churches for their churches.

(*d*) Priests delegated by the local Ordinary within the limits of the delegation and of the jurisdiction of the delegating prelate.

(*e*) Religious superiors and priests of the same order delegated by them for their own churches, not for others and for the chapels of nuns subject to them, that is, of sisters with solemn vows and exempt over whom a prelate regularly exercises full jurisdiction. By special Apostolic privilege superiors of the Congregation of the Mission can give this blessing for the chapels of the Sisters of Charity although they have not full canonical jurisdiction over them. (Cocchi, n. 131.)

148. 3°. Blessings given by priests other than the ones enumerated above would be unlawful, except for special legitimate delegation, but probably not invalid as the canon contains no annulling clause. (Can. 1147 § 3.)

An object blessed for one church does not need a new blessing when used in another.

Under the present law local Ordinaries and religious superiors can certainly delegate this power of blessing; the Code explicitly recognizes this. As it does not intimate that pastors enjoy the same prerogative it would seem to exclude it. Some canonists, however, maintain that pastors, too, can delegate this power as they receive it from the common law. (Cappello, o. c. n. 114; Cocchi, n. 131; Vermeersch, n. 633.)

VI. LOSS OF BLESSING OR CONSECRATION. (Can. 1305.)

1. Sacred vestments and utensils lose their blessing or consecration: (*a*) by alterations or deteriorations which change their original form and render them unfit for their purpose; (*b*) by unbecoming use or exhibition for public sale or auction. What constitutes unbecoming use depends on the sacredness of the object; a consecrated chalice demands more respect than a merely blessed alb or cincture. Not every act of sale has this desecrating effect but public sale or simply public offer for sale.

2. The chalice and paten do not lose their consecration by the wearing away or renewal of the gilding as formerly held; there remains, however, the grave obligation, when the gilding wears away, to have the vessel replated.

VII. HANDLING AND WASHING OF THE SACRED VESSELS AND LINENS (Can. 1306.)

149. 1. Rectors of churches and other superiors should see that no one touches chalices and patens or, before their purification, palls, corporals, and purificators which have served for the Holy Sacrifice, except clerics or the persons who have charge of those objects.

The law refers here, as generally understood, to immediate, not mediate, touch with hands covered.

It now explicitly permits the handling of these sacred objects by all clerics, not simply by those in major orders, and also by all persons who take care of them, clerics or laymen, men or women, it does not make or imply any distinction.

(Capello, n. 804; Blat, 177; Vermeersch, 635.)

Neither does it seem to contain a strict prohibition, certainly not a grave one, for ordinary lay persons to touch those objects but only a direction for superiors not to let them do so. Any reasonable cause would suffice for granting that permission, for example, the necessity of regilding the paten or chalice. (Cappello, l. c.; Chelodi, n. 133.)

2. Lay persons, even religious, brothers or sisters may wash the purificators, palls, or corporals which have served for the Holy Sacrifice only after a first washing by clerics in major orders.

The full purification of these sacred linens regularly requires three distinct lotions in different waters and the law here strictly reserves the first lotion to clerics and even to clerics in major orders. The Bishop himself could not dispense from this provision of the common law and entrust the first lotion to lay persons, not even to members of religious communities as explicitly stated. For a reasonable cause he might probably depute for it clerics in minor orders or only tonsured.

The water of the first lotion must be poured into the sacrarium or if there is none into the fire.

These rules concern only the first lotion as stated in the last clause and implied in the other.

TITLE XIX

VOWS AND OATHS

(Can. 1307–1321.)
(Wernz, iii, n. 572–585; Ferraris, Votum; Vermeersch, n. 637; Blat, n. 178.)

CHAPTER I

VOWS

(Can. 1307–1315.)

I. NATURE.

150. Canonists and the Code itself define vows as promises deliberate and free made to God of something good, possible, and better than its opposite, imposing an obligation of religion.

1. A vow means more than a mere purpose; it contains a real promise with the intention of binding one's self by contract and imposes upon him who takes it the obligation of fidelity to God or of religion to perform what he has promised.

2. Like every promise it supposes even for the validity of the act full deliberation and freedom excluding ignorance or error and fear.

(*a*) Error about the substance of the vow or

its final cause or any condition on which depends the consent renders it invalid. Even an error accidental in itself has the same effect if it acted as the determining cause of the vow, at least according to the teaching of some canonists.

This does not apply to the vows of religion or of Sacred Orders; both the private and common good demand that only substantial errors should vitiate them and that their validity should not depend on too many conditions.

(*b*) Fear arising from intrinsic or merely natural, and hence not unjust, causes does not invalidate a vow as long as it does not take away all deliberation.

Light fear is not presumed in the external forum to have a serious influence on the determination of the will; in the internal forum if it had really been the cause of the vow it would probably render it null.

Grave fear when unjust and hence proceeding from an external, free cause annuls the vow *ipso facto* by ecclesiastical, if not by natural, law.

Among ancient canonists some denied this invalidating effect of grave fear (Wernz, o. c., n. 576); others admitted it but on condition that the fear was caused for the purpose of extorting the vow. The Code explicitly affirms the annulling effect and does not mention the condition which, therefore, does not seem necessary provided the fear remains really the unjust cause, not merely the occasion, of the vow. (Noldin, De Præceptis, n. 210.)

3. A vow is an act of the cult of latria offered to God alone. We may make a vow or promise to God in honor of a Saint; we may also make a

promise to the Blessed Virgin or to Saints, it will have a religious character and a real binding force as an act of the cult of *hyperdulia* or *dulia* but not as a vow in the strict sense of the term.

4. Vows must have for their object something good, possible at least substantially and better than its opposite. We could not expect to honor God by promising things evil, indifferent, impossible, or exclusive of a greater good.

II. SUBJECT.

151. Any person who has the sufficient use of reason and no legal disability can take vows.

(*a*) The natural law itself requires for a vow what it requires for any serious contract, sufficient use of reason to properly understand the nature and gravity of the act and the graver the obligations the latter imposes the more perfect the deliberation necessary for it. To take a vow binding for life would call for more maturity, more perfect deliberation than suffices for the commission even of a mortal sin.

(b) Ecclesiastical law may and does disqualify certain persons for assuming the obligations attached to vows even though they might possess all that the natural law would require. Thus it declares invalid perpetual vows of religion taken before the age of twenty-one.

III. SPECIES. (Can. 1308.)

Vows may be absolute or conditional, perpetual or temporary, public or private, solemn or simple, reserved or not reserved, personal, real, or mixed.

(*a*) A vow becomes public in the canonical sense of the term when the Church through her representative accepts and officially sanctions it whether in presence of witnesses or not, v. g. vows in religious profession. It remains private as long as it has not official recognition even though taken before several persons.

(*b*) Vows are solemn when the Church recognizes them as such and gives them special firmness and juridical efficacy as, for example, vows taken in certain religious orders approved for this purpose. All other vows are simple. What constitutes the difference between solemn and simple vows considered in themselves, canonists have explained in different ways and the Code does not decide.

(*c*) The present law calls reserved those vows from which the Holy See alone can dispense.

(*d*) Personal vows have for their object an action of the one who makes the vow; those which have for their object something extrinsic to the person, v. g. alms, are called real. Mixed vows contain a personal and a real element, v. g. the vow of going in pilgrimage to a certain sanctuary and there making an offering.

IV. RESERVED VOWS. (Can. 1309.)

152. (a) The present laws reserves to the Holy See only two of the private vows: The vow of perfect and perpetual chastity and the vow of entering a religious order approved for solemn vows, and only if taken absolutely not with a condition, penal or other, and after completion of the eighteenth year of age.

The reservation of the vow of pilgrimage to the Holy Places no longer exists.

Perpetual and perfect chastity must be taken in its strict sense; the reservation would not affect the vow of virginity as such, nor the vow of celibacy or of conjugal chastity, nor that of perfect chastity if made conditionally or before the age of eighteen or as binding only *sub levi.*

(*b*) The Const. *Conditæ* (Dec. 8, 1900, c. ii, a. 2) declared reserved to the Holy See all vows taken in a religious order approved by the Sovereign Pontiff. (cf. iii Plen. Balt., n. 93; S. C. P. F., Aug. 24, 1885.) The Code implicitly extends the reservation to all vows taken in a canonical religious profession or to all public vows; but it makes some special provisions for dispensing from some of them. (Can. 214, 633–636, 640, 648, 669.)

V. PERSONS BOUND BY VOWS. (Can. 1310.)

153. Vows, of themselves, bind only those who made them. A superior can not make a vow in the name of a community without the consent of the members; the obligation of vows made by a moral body does not as such pass to their successors. Custom or the legitimate superior could impose it upon them but then it would become an obligation of obedience not of religion. Personal vows, then, affect exclusively their author.

The obligation of real, and in part that of mixed, vows passes to the heirs together with the object, as an obligation of justice, according to many, only of religion according to others, unless the provisions of the last will or some other

agreement have made it one of justice. (Vermeersch, n. 641.)

VI. CESSATION OF VOWS. (Can. 1311–1315.)

154. The obligation of vows may cease by intrinsic or by extrinsic causes.

1. Vows cease intrinsically: (*a*) by lapse of the time fixed for their duration; (*b*) by a substantial change in the object promised or one which if foreseen would have prevented the taking of the vow; (*c*) by non fulfilment of a condition on which depended the promise; (*d*) by cessation of the final cause or of the primary reason that prompted the vow.

2. They cease extrinsically by annulment, by dispensation, or by commutation.

(*a*) Annulment removes the obligation of the vow by exercise of superior power; it may do so directly or indirectly.

In direct annulment the vow itself ceases to exist never to revive, by the action of the superior who has authority over the will of the person who made the vow. Canonists call this power "dominative" as giving mastery. Its exercise supposes a reasonable cause for the lawfulness but not for the validity of the act. It exists in parents and guardians in regard to the vows taken by children under age and not emancipated (Can. 89), and in superiors of religious communities both of men and of women in regard to the private vows taken by their subjects after their profession excepting the vow to enter a stricter order. (18, x, iii, 21.) Religious superiors can not directly annul the vows of novices because

these have not placed themselves under their authority by the vow of obedience. Some authors recognize to the husband the right directly to annul vows taken by the wife but many deny it.

In indirect annulment the obligation of the vow is removed or rather suspended by the action of one who has authority over the matter of the vow and can, therefore, prevent its fulfilment because, and in as far, or as long as, it would conflict with his rights. Thus husbands can suspend vows taken by their wife even before marriage and wives those taken by the husband if they interfere with their matrimonial rights; and in like manner fathers can suspend vows of even emancipated children, masters those of their servants, religious prelates those of novices, superiors those of their subjects, if they interfere with their prerogatives or the exercise of their authority.

155. (b) *Dispensation.* By dispensation here is meant the remission of the obligation of a vow otherwise binding, granted in the name of God, for a just cause, by one endowed with proper power of jurisdiction. It is an exercise of the general power of binding and loosing given to the Church (Matt. xviii, 18); as made in the name of God this remission requires for its validity a just cause such as utility of the Church, the honor of God, special difficulty encountered in the fulfillment of the vow, insufficient freedom, or deliberation in taking it, etc.

The Sovereign Pontiff can not annul directly the vows of secular clerics or lay persons but he has power, for a just cause, to dispense from them all and to annul those of religious. He alone,

personally or through his representatives, can dispense from reserved vows and also from those made in favor of, and accepted by, a third party when dispensation would infringe upon acquired rights. In this last case the Sovereign Pontiff does not dispense without the consent of the person concerned except when, because of extraordinary circumstances, the common good would demand the sacrifice of private interests.

Dispensation from other vows than the ones just mentioned can be granted:

156. 1°. By local Ordinaries to all the subjects and also, as explicitly declared, to strangers actually in the territory. Local Ordinary here includes the Bishop, Vicar General, Vicar Capitular or Administrator, and all Prelates enjoying quasi-episcopal jurisdiction;

2°. By superiors in clerical exempt orders, to those over whom they exercise authority as belonging to the household, professed religious, novices, and all persons who live and board in the convent or monastery as servants, guests, patients, or pupils. (Can. 514);

3°. By those to whom the Holy See has delegated this power. The Sovereign Pontiff communicates his authority in this matter, entirely to the Major Penitentiary and with various restrictions to Apostolic Nuncios or Delegates and to local Ordinaries.

Popes have also granted special powers to confessors belonging to mendicant orders and directly or indirectly to others.

Local Ordinaries sometimes communicate theirs to pastors or confessors.

157. (c) Commutation of vows consists not in the removal or suspension of the obligation but in the substitution of a matter of greater, equal, or lesser value for the one promised.

The person who made the vow may of his own authority commute it into a work of greater and even of equal value as explicitly stated in the law provided the vow be not reserved or made in favor of another party and accepted by him. According to some, however, he could commute a reserved vow into a more excellent work.

Commutation of a reserved vow or of any vow into a lesser work belongs to the same superior as dispensation from it.

After commutation even by a superior it remains lawful to return to the original work.

A light reason suffices for the validity of commutation into a work of about equal value; commutation into a work of lower merit requires about the same reason as dispensation; for commutation into a work of higher worth no reason is needed.

The work into which a reserved vow was commuted does not share in the reservation.

Power of dispensing includes power of commuting but not vice versa.

Religious may commute all their previous non-reserved vows or have them commuted into the religious profession. If not commuted they become at least suspended by the profession and remain so for the whole duration of the religious life. Under the former discipline solemn profession annulled all previous vows; simple profession left them unaffected, only the superior could sus-

pend them if they interfered with religious observance. At present solemn and simple profession have the same effect but they only suspend the vows. (Can. 1315.)

CHAPTER II

OATHS

(Can. 1316–1321.)

I. NATURE AND CONDITIONS.

158. An oath is the calling of God as witness to the truth of our assertions or the sincerity of our promises. Thereby we pay homage to His infinite truthfulness and add strength to our own word as a religious man would not appeal to God in support of falsehood or deceit.

Canonists have summed up the conditions for the lawfulness if not the validity of an oath in the words of the prophet Jeremias: "Thou shalt swear in truth, in judgment, and in justice" (iv, 2), strict truthfulness, discretion and reverence, sincerity and honesty.

Ecclesiastical law considers, besides, oaths as strictly personal acts and does not recognize any taken by proxy.

II. OBLIGATION IMPOSED BY OATHS. (Can. 1317.)

(*a*) From an oath freely taken arises a special obligation of religion to keep the promise thus confirmed.

(*b*) Oaths extorted by violence or grave fear are valid but the ecclesiastical superior may dispense from them. Thus they differ from vows which grave fear renders null. The Church does not wish to give occasion to perjuries by admitting too readily the nullity of acts so frequently repeated in ordinary life. (15, x, ii, 24.)

(*c*) An oath taken with full knowledge and freedom, without violence or fraud, by which a person renounces a private advantage or a favor granted to him personally by law must be kept provided this does not endanger eternal salvation.

In the Decretals we find discussed and solved cases of married women consenting to sell their dowry, of daughters who having received their dowry agreed not to claim their share of the paternal inheritance, of persons who had bound themselves not to revoke their last will or accepted to pay usurious rates of interest on money; the Pope consulted on the value of these contracts answered that whilst by civil law they do not of themselves possess any binding force, if an oath has been added to them the latter must be kept as long as this does not involve violation of any moral law or injury to a third party. (6, 28, x, ii, 24.) The law annulled these agreements for the benefit of the persons concerned; they may renounce this benefit and they do so effectively by their oath. (Reiffenstuel, L. ii, Tit. xxiv § 3, n. 93–99.)

Some canonists see in this an exception to the usual application of the principle *accessorium sequitur principale;* others consider the oath in such cases as an independent act containing renunciation to a private advantage.

III. OBLIGATION OF PROMISSORY OATHS. (Can. 1318.)

An oath added to a contract follows its nature and conditions. It binds when and as long as the contract does, in the same sense and with the same restrictions.

Oaths can not give any binding force to acts or contracts which directly imply injury to a third person or the common good, or endanger eternal salvation.

IV. CESSATION OF OATHS. (Can. 1319.)

159. The obligation arising from oaths ceases; (*a*) by condonation from the person whom the oath benefits;

(*b*) By substantial change in the object or a change in the circumstances which renders that object evil or altogether indifferent or preventing a greater good. In the case, however, of an oath taken in favor of a third party and accepted by him its obligation does not cease because it would prevent a higher good; dispensation might then be used;

(*c*) By cessation of the final cause or nonfulfillment of a necessary condition;

(*d*) By annulment, dispensation, or commutation as in the case of vows.

V. DISSOLUTION OF OATHS. (Can. 1320.)

The persons who can annul, dispense from, and commute vows have the same power in regard to oaths and can exercise it on the same conditions with this difference that the law mentions no

reservation in connection with oaths except in the following case: If the dispensation may cause some prejudice to a third party who refuses to give up his acquired right the Holy See alone can grant it and only for grave reasons when the utility or necessity of the Church demands it.

VI. INTERPRETATION OF OATHS. (Can. 1321.)

Oaths should be interpreted according to the strict sense of the law and the intention of the one who took them at least if he acted in good faith. If he used deceit, in the external forum the oaths should be interpreted according to the intention of the person to whom they were made.

PART IV

TEACHING OFFICE OF THE CHURCH

(Can. 1322–1408.)

(Blat, n. 193; Vermeersch, n. 656; Cocchi, n. L. iii. P. iv, n. 1.)

At the beginning of this Part on the Teaching Office of the Church the legislator by way of introduction sums up in a few preliminary Canons the principal dogmatic and moral principles which bear on this matter; then he treats in five distinct Titles of the propagation of the faith by preaching, of Christian education in schools and seminaries, of the preservation of faith by the censure and condemnation of books and of the canonical profession of faith.

FUNDAMENTAL NOTIONS. (Can. 1322–1326.)

I. TEACHING MISSION OF THE CHURCH.

(*a*) Our Lord has entrusted to the Church the deposit of faith, that is, the treasure of revealed truth with mission jealously to keep it intact and faithfully to interpret it; He promised her at the same time, in the discharge of this twofold duty the perpetual assistance of the Holy Spirit.

(*b*) By virtue of this mission and because of the universal character of the Christian religion the Church has the right, independently of any civil power Christian or pagan, to preach the Gospel to all nations without exception; all men are bound by divine law to listen to her teachings and investigate her claims; and when they have sufficient knowledge of it to embrace the true faith and enter God's Church. (Cavagnis, Institutiones Juris Publici Ecclesiastici, P. 2a, L. ii, c. 1.)

II. OBJECT OF CATHOLIC BELIEF. (Can. 1323.)

161. (*a*) As theologians explain we must believe with divine faith all the truths revealed by God and contained in Scripture or in Tradition, and by Catholic faith those same truths when proposed to us by the Church as objects of faith.

(*b*) The Church proposes these truths to our belief either in a solemn manner in the decrees of General Council and the *ex Cathedra* definitions of the Popes, or in a more ordinary form in her daily teaching as it finds expression in her liturgy and practice and principally in the preaching of the episcopal body united to the Pope. (Tanquerey, De Ecclesia, n. 882, 884; De Fide, n. 201, 202; Vatican Council, Sess, iii, c. 3.)

(*c*) The binding force of the dogmatic definitions does not go beyond the obvious import of the decree, that is, we do not have to accept as of faith anything more than what the text clearly expresses.

III. DOCTRINES CONNECTED WITH FAITH. (Can. 1324.)

162. The Church's infallibility extends not only to revealed truths but also to all doctrines and even facts so closely connected with the direct object of faith that the Church could not protect and explain one without pronouncing on the others as, for example, theological conclusions or dogmatic facts. These, when defined by the proper authority, we must receive, not as revealed but as infallibly certain.

Even without using his privilege of infallibility the Sovereign Pontiff may issue doctrinal statements or decrees either personally or through the Roman Congregations, particularly the Holy Office or in matters pertaining to Scriptures, the Biblical Commission. To such pronouncements we must likewise give our internal if not absolute at least conditional assent. (L. Choupin, Valeur des Décisions doctrinales et disciplinaires du St. Siège; Beauchesne, Paris, 1907, p. 27, 56.)

Often the Holy See, instead of positive expositions of the truth publishes condemnations of doctrines contrary to it in various degrees. It may reprove them as false, close to heresy, rash, dangerous, scandalous, unsafe, etc. The faithful must reject them in the same sense, for it does not suffice for them to avoid heresy; they must keep away from anything that more or less closely approaches or leads to it.

IV. EXTERNAL MANIFESTATION OF FAITH. (Can. 1325.)

163. Faith must not remain a merely internal disposition but neither do we have to manifest it

all the time. Circumstances may in some cases permit positive concealment, yet never denial, of it. Theologians allow receiving secretly into the church, v. g. in danger of death for grave reasons.

We must, then, openly profess our Christian faith at least whenever our silence or evasive answer or mode of acting in general would imply denial of the faith or look like contempt for religion; or also if it would bring dishonor to God or scandalize the neighbor.

In one case the Holy See pronounced it unlawful to administer baptism to a candidate who did not wish to become known as a Christian. (S. C. P. F., May 28, 1630, n. 84.) In other cases it disproved the conduct of Christians who to conceal their character took Mohammedan names or wore pagan dresses. (H. O., Nov. 29, 1729, Coll. P. F., n. 373.) When will such acts become signs of apostasy or disrespectful for religion or scandalous depends much on circumstances of time and place.

Regularly when legally interrogated by lawful and public authority on one's religion the honor of God and of the Church will command a direct and clear answer. Questions by private persons do not of themselves impose such an obligation. Neither are we bound in this matter any more than in others to avoid all possible scandals even indirect ones when there may exist a grave reason for tolerating them.

V. HERESY, APOSTASY, SCHISM. (Can. 1325 §2.)

164. A person who has received baptism and while retaining the name of Christian obstinately

denies or doubts one of the truths of divine and Catholic faith becomes a heretic. Formal heresy supposes rejection of, or wilful doubt, about a truth contained in the deposit of faith known as such and proposed by the Church as revealed.

Apostasy is the complete abandonment of the Christian faith by a baptized person, whether he embraces another religion such as Mohammedanism, Buddhism, or becomes an unbeliever, a rationalist, materialist, or atheist.

Schism is the breaking-up of ecclesiastical unity which consists essentially in the union of the faithful with one another and with the Supreme Pontiff as the head of Christ's spiritual body. A schismatic, then, whilst claiming to remain a Christian refuses to recognize the authority of the Pope or to communicate with the faithful subject to him. Schism often springs from heresy or implies it particularly since the definition of the Pope's infallibility, but not always nor necessarily. Rebellion against a particular Bishop does not of itself constitute schism.

VI. RELIGIOUS DISCUSSIONS WITH NON-CATHOLICS.

(Can. 1325 §3.)

165. Discussing religious topics with non-Catholics is not in itself evil; under certain conditions it may give excellent results but experience has shown that ordinarily it did little good or more harm than good because of the insufficient ability of the champion of orthodoxy or of the ill will of the opponent whom the best arguments serve only to render more obstinate, or of the ignorance of the audience who take high-sounding

sentences for conclusive evidence or for other reasons. The Church, therefore, has made a general rule forbidding those disputations except with proper permission. Already in the thirteenth century Pope Alexander V threatens with excommunication laymen who engage in controversies with heretics (2, V, 2, in 60); a canon attributed to Pope Gelasius in Gratian's Decree contains a similar prohibition for clerics. (36, Causa xxvi, Q. iii.) The Holy See insisted on this particularly since the seventeenth century and the Congregation of the Propaganda called the attention of missionaries to this rule on several occasions. (Feb. 7, 1625, Coll. n. 8; Feb. 7, 1643, n. 112; Dec. 18, 1692, n. 48.)

The Code maintains this legislation and warns Catholics to avoid disputations or conferences with non-Catholics particularly in public unless they have obtained permission from the Holy See or in urgent cases from the local Ordinary.

The law has in view formal debates or disputations on controverted subjects arranged beforehand, not simple discussions which may arise in the course of a conversation, nor informal conferences which two persons may have privately on religious matters, nor apologetic conferences with liberty left to hearers to present objections. It applies principally to public debates but not exclusively.

Controveries carried on in writing are governed by the rules on the censure of books and various publications.

When the interests of religion do not permit to refuse or put off a discussion with non-Catholics and want of time renders recourse to

Rome impossible the local Ordinary may grant the necessary authorization. If the Ordinary himself can not be reached the prohibition ceases.

In a letter to the Apostolic Delegate to the United States, Sept. 18, 1895, Pope Leo XIII declared it more advisable, *consultius,* for Catholics not to take part any longer in the so-called Parliaments or Congresses of Religion composed of representatives of different cults, pagan and Christion, but rather to have their own Congresses for the discussion of religious problems which outsiders also might attend. (Eccles. Rev., Nov. 1895, p. 395.)

VII. TEACHING AUTHORITY OF BISHOPS.

As successors of the Apostles Bishops united to the Sovereign Pontiff have a real power of teaching as well as of ruling the flock confided to their care and the faithful ought to accept their guidance with religious docility. But their authority does not extend to the universal Church and neither taken singly nor when united in particular councils do they enjoy the privilege of Infallibility.

TITLE XX

PREACHING THE WORD OF GOD

(Can. 1327–1351.)

(A. Berardi, Theologia Pastoralis, c. iv, 5; Wernz, III, n. 24; Thomassin, Ancienne et Nouvelle Discipline de l'Eglise, P. ii, L. i, c. 24–26, vol. iv, p. 119, 120; P. ii, L. iii, c. 83–86, vol. v; Bingham, Antiquities of the Christian Church, B. xiv, ch. iv. Dictionary of Christian Antiquities, Homily, Preaching; Canoniste Contemporain, 1924, Avril, p. 167, Mai, p. 217.)

After two introductory canons recalling the general principles on the power of teaching in the Church the preaching of Christian doctrine is considered in the three Chapters of this Title under its threefold form, Catechetical Instruction, Sermon, and Missions.

GENERAL PRINCIPLES; POWER OF TEACHING.

(Can. 1327, 1328.)

166. 1. The mission of teaching the Catholic doctrine belongs primarily to the Roman Pontiff for the whole Church and to the Bishops for their respective dioceses.

The Sovereign Pontiff as the successor of St. Peter, the head of the Apostolic college is by Christ's ordinance the supreme, infallible teacher,

the rock upon which rests the whole edifice of revealed truth. But to the other Apostles too although under Peter's guidance and authority and to their successors the Bishops under the direction of the first pastor did Our Lord commit the preaching of the Word. They also receive their mission from Christ.

During the first centuries the Bishops alone preached the Gospel or at least no one else preached in their presence. The historian Posidius relates how the Bishop of Hippo Valerius, a Greek by birth, finding himself insufficiently familiar with the Latin tongue asked his priest Augustine to preach in his place, against the custom of the African Churches; he justified the innovation by the example of Churches in the East. (De Vita Sti Aug., c. v.) At Alexandria, according to Sozomene the same custom existed as in Africa but it dated from the time when Arius commenced to spread his errors.

167. 2. The Apostles considered preaching as one of their great duties as well as their right. (Acts vi, 2, 4.) It has remained likewise, if the prerogative, one of the grave obligations, of their successors.

The Fathers, the Councils and the Sovereign Pontiffs often remind them of this. (Trent, Sess. v, c. 2; xxiv, c. 4.) The Code only confirms the existing law when it declares Bishops bound to preach the Gospel personally except for some legitimate impediment.

As long as Christian communities continued small and limited almost entirely to cities Bishops could discharge this duty without much assistance

but as the Gospel spread they needed helpers. In Africa Valerius had followers and the practice of entrusting the ministry of preaching to priests gradually extended to other countries in the West; it had existed for some time already in the East. When did it become not only lawful but obligatory for Bishops to have priests to assist and supply them in the instruction of the people ancient documents do not show clearly. The Council of Mayence in the ninth century affirms the obligation (813, Can. 25), but it must have existed before.

The Lateran Council of 1215 (15, x, i, 31) commands Bishops to have well-qualified priests to take their place when occupations, ill health, hostile invasions, not to say ignorance, prevent them from preaching and to have in their cathedral and conventual churches men on whom they can depend for this office.

The Council of Vaison (529, Can. 2) authorized parish priests both in cities and country places to preach to their people and the Council of Arles (813, Can. 10) ordered them to do so. The Council of Meaux wants Bishops to have by their side men capable of instructing parish priests and teaching them how to preach. (845, Can. 35; Thomassin, l. c., iv, p. 119–121.)

Thus from the fifth century on the command to preach the Gospel to every creature was carried out through the Bishops by divine appointment, the parish priests with whose office ecclesiastical law connected first the privilege then the obligation of announcing the Word of God to their flock and other priests used as auxiliaries by Bishops.

168. 3. Only the Pope and Bishops have their

mission from Christ, all others must receive it from them, directly or indirectly, through their legitimate superiors.

The practice of the ancient Church clearly shows the exclusive right of Bishops in this matter and the dependence of priests or deacons on their authority. In the Lateran Council (1215) Innocent III threatened with excommunication those who would presume to preach publicly or privately without authorization from the Pope or the Ordinary of the place. (13, x, v, 7.) Pope Nicholas III forbade the Friars Minor to preach in any diocese against the will of the Bishop (3, v, 12, in Sexto) and Clement V did not allow them to preach in parochial churches without the pastor's permission except by order of the Bishop; they might, however, preach in their own churches or on public squares except when the Bishop himself delivered or attended a sermon in the place. (2, iii, 7, Clem.; 1, v, 7, Extr. Comm.) By the law of the Council of Trent regulars may not preach outside the churches of their order except with the permission of the local Ordinary and even in those churches they may not preach against his will. (See. v, de Ref., c. 2; xxiv, c. 4.) The Code affirms here the necessity of permission from the legitimate superior for preaching and defines a little further on who is that superior. The permission may be granted explicitly and for individual cases or implicitly and habitually by appointment to an office to which the sacred canons have attached the duty of preaching.

CHAPTER I

CATECHETICAL INSTRUCTION

(Can. 1329–1336.)

(Wernz, iii, n. 41; Dom Martène, De Antiquis Ecclesiæ Ritibus, L. i, c. 1, 5–9; Bordier, Histoire des Catéchismes pendant les premiers siècles de l'Eglise, Paris, 1858; Hézard, Histoire du Catéchisme depuis la naissance de l'Eglise jusqu'à nos jours, Paris, 1900; Dictionnaire de Théologie Catholique Catéchèse, Catéchisme; Dictionnaire d'Archéologie Chrétienne et de Liturgie, Catéchèse, Catéchisme, Catéchuménat; Dictionary of Christian Antiquities, Catechumens; Nouvelle Revue Théologique, Mars 1925, p. 163.)

I. NATURE.

169. We call catechetical instruction in general a simple, familiar, methodical presentation of the fundamental Christian truths, the principal articles of faith, moral precepts, and means of salvation. The teacher may proceed by way of questions and answers or of direct exposition. He may address children or adults, ignorant or better educated persons, in church, school, hall, or even private residence.

II. FORMER DISCIPLINE.

1. Instruction of some kind, even though perhaps in some cases very brief as for the Ethiopian

eunuch or the jailer at Philippi (Acts viii, 36; xvi, 33), always preceded the admission of converts to baptism. Critics point out traces of that primitive catechesis or references to it in the writings of the New Testament. (Heb. vi, 1–3; Rom. viii, 15; Gal. iv, 6; I Cor. x, 2–4; xv, 3–5.) We must, however, for a complete account of the mode of instruction come down to the fourth century and the organization of the catechumenate with the two or three successive series of exercises which all candidates had to go through. The teaching then has assumed a definite form as seen in the celebrated Catecheses of St. Cyril. Schools are established at Edessa, Antioch, and particularly Alexandria for the religious instruction of all classes of people and also the training of catechists. St. Augustine following the example of St. Gregory of Nyssa writes a treatise *De catechisandis rudibus*.

He addresses it to the deacon Deogratias; St. Cyril had delivered his first catecheses also as a deacon and St. Cyprian refers to a lector in the Church of Carthage as *Doctor Audientium* or teacher of catechumens. Bishops did not reserve to themselves this mode of instruction; it did not, like the sermon, form part of the Sunday service and was often given outside the church, in the baptistery, a lecture-hall, the deacons' dwelling, etc.

170. 2. When towards the end of the fifth century baptisms of adults become rare in the older Christian communities the catechesis follows instead of preceding the reception of the sacrament. The Apostles' Creed and the Lord's Prayer which

all must know by heart still form the basis of the instruction. For adults synods add the Athanasian Creed, the commandments, the principal sins and vices. (Frankfort, 794, Can. 33; Arles, 813, Can. 19; Béziers, 1246, Can. 7.) The Council of Lambeth (1281) orders parish priests to explain four times a year to all the faithful the fourteen articles of the faith, the ten precepts of the Decalogue, the two evangelical counsels, the seven works of mercy, the seven deadly sins, the seven principal virtues and the seven sacraments.

For the guidance of instructors theologians wrote courses of religion more or less developed according to needs. Two of them enjoyed special popularity in the Middle Ages and served as models for many others: The Elucidarius of Honorius of Autun and the Septenarius of Hughes of St. Victor.

Negligence, however, crept in from time to time and Popes or synods had to remind again pastors of the obligation of instructing their people. Bishops shall take care, says the Council of Trent, that at least on the Lord's days and other festivals the children in every parish be taught the rudiments of the faith by those whose duty it is and who shall be constrained thereunto by their Bishops even by ecclesiastical censures if necessary. . . . To adults the Word of God should be announced on all Sundays and Feast days but during the season of the fasts of Lent and Advent, daily or at least three times in the week. (Sess. xxiv, c. iv, de Ref.) To facilitate compliance with these obligations a simple, concise summary of the Christian doctrine was published soon after

under the title of Roman catechism or catechism of the Council of Trent.

171. In modern times, too, the Popes and synods have on several occasions brought to the attention of the clergy and faithful the supreme importance of religious instruction. (Benedict XIV, Etsi minime, Feb. 7, 1742; Pius IX, Nostis et Nobiscum, Dec. 8, 1849; Cum nuper, Jan. 20, 1858.)

In a letter of July 31, 1894 Leo XIII deplores the grave abuses which, in some countries, have rendered preaching either contemptible or barren and unprofitable and he recommends to pastors of souls to prepare themselves for this office by serious study and to expound to the people in a clear, simple manner the doctrine of the Church on the sacraments, the creed, the precepts of God and of the Church, the virtues and vices, the duties of state, the four last things, and other such religious, to the exclusion of profane, subjects.

Pius X took up the same subject in an Encyclical on the teaching of Christian doctrine (Acerbo nimis, Apr. 15, 1905) in which after declaring that the principal cause of the many evils of the day lies in religious ignorance he proposed as a remedy the more assiduous teaching of revealed truth to children and also to adults under the form of simple, familiar, catechetical instructions. He prescribed that instructions of this kind should be given in all parishes every Sunday at an hour suitable for the people, following the plan of the catechism of the Council of Trent and so dividing the matter as to cover the whole field every four or five years.

III. PRESENT LEGISLATION.

172. 1. *General Principle.* (Can. 1329.) It is the special and very grave duty of pastors to give the proper catechetical instructions to the Christian people.

This obligation rests on others also but most particularly and directly on those who have the care of souls. The Code speaks here of the necessity of catechetical instructions as distinct from sermons and homilies, for adults as well as for children.

2. *Duty of Pastors to Children.* (Can. 1330, 1331.) (*a*) *Confession and Confirmation Class.* Pastors must at stated times every year, by continued instruction lasting over several days, prepare children immediately for the reception of the sacrament of penance and of confirmation if this sacrament is administered.

(*b*) *First Communion Class.* They must take special pains by careful instruction to prepare children for the worthy reception of their first Communion, choosing for this the season of Lent if circumstances permit. Pius X prescribed these instructions for every day in Lent and other days after Easter if necessary.

(*c*) *Perseverance Class.* After their First Communion children should be given further instruction that they may acquire a more complete and more thorough knowledge of their catechism.

The rules laid down by Pius X required parish priests and all who have the care of souls on all Sundays and Festivals throughout the year without exception to instruct with the text of the Catechism, for the space of a full hour the young

of both sexes in what they must believe and do for salvation. (Acerbo nimis, 1.) The Code has not retained this provision difficult to observe in some places. It thus permits to give the necessary instruction in some other manner particularly in Catholic schools where they exist. Local legislation may regulate this matter more in detail as special conditions demand.

173. 3. *Catechetical Instructions for Adults.* (Can. 1332.) (*a*) From the fact that we have no sermons from the Bishops of the first centuries, nor from the Roman Bishops prior to St. Leo the Great (d. 461) some historians conclude that in those early days religious instruction was given exclusively under the form of catechesis to all classes of Christians. (Thomassin, o. c., c. 83, vol. v, p. 402.) It may at least show the relative importance occupied by familiar catechizing as distinct from formal preaching.

Neither did the sermon in the mind of the Church render the catechesis unnecessary even in modern times. The Council of Trent, says Benedict XIV (Const. Etsi minime, Feb. 7, 1742), imposed upon those who have care of souls two chief obligations: that of speaking to the people on divine things on Sundays and Feast days and that of instructing the young and ignorant in the rudiments of the law of God and of the faith. He in turn makes a clear distinction between the sermon or homily and the catechism. And Pius X (Const. Acerbo nimis, Apr. 15, 1905) declares untenable the view of those who perhaps desirous of saving themselves trouble would count the explanation of the Gospel as serving also for the catechetical instruction. The

sermon, he says, presupposes a knowledge of the rudiments of faith which the instruction imparts; the catechist lays down the foundation upon which the pulpit orator can build.

And since, in these days, he continues, not only the young but adults also stand in need of religious instruction, all parish priests and all others having care of souls must in addition to the usual homily on the Gospel delivered at the parochial Mass on all days of obligation, explain the catechism to the faithful, in a simple fashion suited to the understanding of their hearers, at an hour convenient for their people but not at the same time as the instruction of the children.

(*b*) The Code renews these enactments imposing upon pastors the obligation of explaining the catechism to adults on all Sundays and Holy days of obligation at the hour which in their estimation will permit the largest number of parishioners to attend and in a language adapted to their capacity.

It does not explicitly command the use of the Catechism of the Council of Trent, nor does it determine how long the pastor may take to cover the whole field of Christian doctrine. Local Ordinaries may decide at what precise time and in what form this explanation of the catechism should be given to the people, whether during the Mass or at a special service, in the form of a series of familiar instructions according to a programme prepared beforehand for all the parishes of the diocese or on some other plan left to the initiative of individual pastors.

174. 4. *Helpers to Pastors.* (Can. 1333, 1334.) (*a*) For the catechizing of children the

pastor may, or should when he can not do the work personally, ask for the assistance of ecclesiastics who live in the parish and even of lay men and women who possess the necessary qualifications. He may use particularly members of organizations established for this purpose such as the Confraternity of the Christian Doctrine founded in Rome in 1560 and approved by St. Pius V in 1571.

Ecclesiastics should not refuse their assistance to their pastor in this most excellent work; the Ordinary might compel them to give it even by means of censures if needed. This strictly applies only to non-exempt clerics, not to exempt religious. The law does not authorize here local Ordinaries to exact this from them as so many other persons can render that service.

(*b*) For the instruction of adults, the Bishop may, if he deems it necessary, demand the assistance of even exempt regulars and the superior will have either personally or through his subjects, to give religious instruction to the people principally but not exclusively in the church belonging to the order, without detriment, however, to religious discipline.

Local Ordinaries may, therefore, compel even exempt regulars to give catechetical instructions in their own churches to the people who attend them and even in others when necessary and as far as compatible with the requirements of religious life and rule.

5. *Obligation of Parents and Masters.* (Can. 1335.) Parents and those who hold their place like grandparents, guardians, or others, and likewise masters and sponsors must take care that

those under their charge on those various titles receive the proper religious training. Pastors should remind them of this duty and of their responsibility in this regard.

6. *Exclusive Right of Local Ordinaries.* (Can. 1336.) The Ordinary of the place has full authority to regulate in the diocese all that pertains to religious instruction. He may determine the time to be given to it, the programme and method to be followed, the text to be explained, etc. Even exempt religious must conform to these directions in their instructions to persons who do not enjoy the same privilege.

IV. MEASURES TAKEN TO ENFORCE THIS LEGISLATION.

175. 1. On May 31, 1920 the Congregation of the Council with the approval of Benedict XV sent a circular letter to the Bishops of Italy inquiring about the enforcement of the legislation on the teaching of Christian doctrine. Ordinaries were asked to answer according to their knowledge and conscience and with the least possible delay the following questions:

(*a*) What, if any, measures have been taken to secure execution of the decrees regarding the explanation of the Gospel to the people and the teaching of catechism?

(*b*) Have Bishops enacted any penalties against offenders?

(*c*) Do all pastors in the diocese and others having care of souls explain the Gospel to their people on all Sundays and Holy days of obligation and teach the Christian doctrine to adults on

the same days all year without any interruption?

(*d*) Do all pastors hold for children the confession, First Communion and confirmation classes as prescribed and do they have the confraternity of Christian doctrine?

(*e*) The Bishops were requested to give the names of offenders in the matter, state what means had been used to coerce them, what co-operation the secular or regular clergy had showed themselves willing to supply and what reasons they had for refusing it if they did; the Congregation wished to know the names also of those thus refusing and the suggestions which Ordinaries might have to make for the future. (A. A. S., July 1, 1920, p. 299; N. R. T., March 1925, p. 166.)

176. 2. By the *Motu Proprio Orbem Catholicum* of June 29, 1923 Pope Pius XI wishing to extend to the whole world the discipline inaugurated by Benedict XV for Italy and by calling the attention of all to this most important work, excite and sustain the diligence and zeal of Prelates, created in connection with the Congregation of the Council a special office or department with mission to look after everything which pertains to religious instruction. On this occasion the Pontiff invited the co-operation of all, Bishops, clerics, and lay people; he urged particularly on members of pious sodalities faithful attendance at, and active interest in, catechetical instructions; he asked religious communities to have in their principal schools special classes for the religious instruction of the young and the training of catechists. (A. A. S., July 5, 1923, p. 327; N. R. T., March 1925, p. 168.)

3. The Office created by Pope Pius XI commenced in 1924 an investigation of existing conditions in regard to the teaching of religion in the different parts of the world; for this purpose it sent to all Bishops a series of questions concerning religious instruction in parishes, in Catholic colleges and in public schools, the time devoted to it, the method followed, the results obtained, the possible defects and their remedies, the normal and the actual attendance. (N. R. T., l. c., p. 171.)

CHAPTER II

SERMONS

(Can. 1337–1348.)

(Thomassin, l. c., P. ii, L. iii, c. 83–86; Wernz, iii, n. 24; Vermeersch, n. 671; Cocchi, n. 21; Periodica de re Canonica et Morali, 20 Martii, 1920, p. 31; Ecclesiastical Review, Oct. 1917, p. 377.)

177. Under the title of sacred discourses, *Sacrae Conciones,* the Code includes here sermons proper, exhortations addressed only to religious (Can. 1338) and in general all forms of preaching distinct from the catechetical instruction treated of in the previous chapter.

Roman Pontiffs and Councils both general and particular have frequently, specially perhaps in modern times, dwelt on the duty of preaching, the manner of fulfilling it, the negligences and abuses that have repeatedly crept in in spite of all warnings.

Pope Benedict XV devoted to this subject the *Encyclical Humani Generis* of June 15, 1917 and shortly after, with his express approval, the Consistorial Congregation issued detailed rules for the application of the principles affirmed by him, in an Instruction which went into effect immedi-

ately even before the Code did. (June 28, 1917.)

In these two documents we have as an authorized interpretation of the canons of this chapter which embody substantially their provisions regarding the authorizations required for preaching (Can. 1337–1339), the conditions for granting them (Can. 1340–1341), the persons who may be permitted to preach (Can. 1342), the right and duties of Ordinaries and pastors in the matter (Can. 1343–1344), the sermons prescribed (Can. 1345–1346), the manner of preaching (Can. 1347), the duty of the people (Can. 1348).

I. AUTHORIZATIONS REQUIRED FOR PREACHING. (Can. 1337–1339.)

As said before the Supreme Pontiff and the local Ordinaries in their own respective territories have the mission to preach by Divine right; all the others must receive it from them.

178. 1. To preach in any church or chapel even though belonging to religious, to an ordinary audience, regulars as well as seculars need faculties from the local Ordinary. He may grant them implicitly or explicitly. Appointment to the office of canon penitentiary or pastor and in general to any office having the care of souls connected with it implies authorization to preach.

2. Faculties from the Ordinary of the place are likewise needed for any preaching addressed to non-exempt religious or even to exempt religious if they belong to a lay order and to nuns although subject to regulars.

3. For sermons to audiences composed exclu-

sively of members of exempt clerical orders or of persons who share in their privileges like novices or students, servants, guests, or patients who have their board and lodging in the house (Can. 514) the superior of these religious designated by the constitutions grants the necessary faculties and he may grant them not only to his own subjects but also to members of other orders and to secular priests provided these have been declared fit for this office by their respective Ordinaries.

4. Besides faculties from the local Ordinary those who preach to nuns subject to regulars must obtain permission from their superior and anyone who has received authorization to preach to members of lay communities should not use it without the consent of the superior in institutes of women as well as of men. The Ordinary might, however, oblige a non-exempt community to accept the preacher appointed by him.

5. These faculties which religious need the local Ordinaries should not without grave reason refuse to those whom their superiors present nor should they withdraw the concession once made; particularly should they not take faculties away from all the priests of a community at the same time.

On the other hand religious should not use faculties granted by the local Ordinary without permission from the religious superior.

II. CONDITIONS FOR GRANTING THEM.

(Can. 1340–1341.)

179. 1. *Fitness.* 1°. Local Ordinaries or religious superiors may not without serious fault

grant the faculty of preaching to anyone whose fitness both as regards moral character and learning they have not ascertained by means of an examination as prescribed for confessors unless the Ordinary already knows them as properly qualified. (Can. 877.)

"The regular way of finding out the fitness of anyone for the office of preaching especially as regards knowledge and delivery," says the Consistorial Congregation (Inst., June 28, 1927, n. 14–16), "is an oral and written examination undergone before three examiners whom the Ordinary may select from the synodal examiners or from priests not belonging to the diocese or even from the regular clergy. After this test or even before the Ordinary must inquire with equal and greater diligence into the worthiness of the candidate in regard to piety, uprightness of conduct, and reputation.

"According to the result of this two-fold examination the Ordinary may declare the candidate either fit for general preaching or for a particular kind of preaching only; he may grant him the permission absolutely or under certain conditions, indefinitely or only for a limited time and by way of experiment; or he may refuse it altogether.

"Ordinaries may, however, in particular cases and as an exception admit one to preach without these examinations if they have otherwise sufficient proofs of his fitness."

They may accept as sufficient the examinations taken by their subjects before the ordination in the seminary; in the case of an outsider or of a religious they may depend on the testimony of his Ordinary or superior although they might demand

also an examination. (Can. 1341 § 1; Vermeersch, n. 675, 676.)

2. Should one who had received the faculty of preaching prove or become unworthy or unfit the Ordinary may and even should withdraw it. Should only a doubt arise he ought to dissipate it even by recourse to an examination if necessary.

Against withdrawal of the permission to preach there is no recourse *in suspensivo* but only *in devolutivo*.

180. 2. *Application for Permission.* (Can. 3141.) 1°. As a general rule priests from another diocese, whether secular or regular, exempt or non-exempt, must not be invited to preach, for example, by a pastor without obtaining first the permission of the Ordinary in whose territory the preaching will take place. The latter may grant this permission only after securing a favorable report from the candidate's Ordinary on his fitness, unless he has certain knowledge of it from some other source.

Ordinaries are gravely bound in conscience to give strictly truthful testimony in these matters.

It does not seem forbidden, however, for an Ordinary to give priests of another diocese or religious approved by their superior general permission to preach in his territory; a pastor might then invite such preachers without further formality. The Ordinary might probably also authorize pastors to invite outside preachers leaving to them, when prudent to do so, the responsibility of ascertaining the fitness of the candidates and obtaining the permission of their respective Ordinaries. (Vermeersch, n. 676.)

Moreover, some canonists would apply the

prescriptions of this canon only to sermons preached on more solemn and rarer occasions as it would seem too heavy an obligation imposed upon pastors to demand that they apply for permission to their Bishop whenever they wish to invite a preacher from another diocese even for frequently occurring occasions. A general permission should suffice in such cases. (Prummer, Manuale Juris Canonici, Q. 405, n. 4.) Custom may interpret the law in this sense.

181. 2.° When a permission is necessary it should be asked for in good time by the pastor, the rector of the church, the chaplain, or director of confraternity in whose church the preaching is to take place. If the parish church serves also as chapter or confraternity church the duty of asking for the permission devolves on the one who has the right to perform the sacred functions.

The Instruction of the Consistorial Congregation (n. 9) demands that in the case of a preacher who does not belong to the diocese the faculty of preaching be granted in writing and the kind of preaching and place for which the faculty is granted be designated.

III. PERSONS WHO CAN BE COMMISSIONED TO PREACH. (Can. 1342.)

182. 1. Women were never permitted to preach neither in the Apostolic Age nor afterwards. (I Cor. xiv, 34, 35; I Tim. ii, 12.) An ancient canon attributed to a Council of Carthage (398, Can. 98, 99) expressly forbids them to do so whatever may be their learning and piety. (29, D, xxiii.) Only in heretical sects as among the

Montanists did they receive this authorization. Abuses occasionally crept in. Pope Innocent III writes to the Bishops of Valencia and Burgos (1214) about certain Cistercian Abbesses of whom he has heard that they do not hesitate to bless their nuns, hear their confessions, and preach homilies. He condemns this as an unheard of and absurd practice and commands the Prelates to stop it with firm hand. (10, X, V, 38.)

2. In the first years of Christianity some laymen endowed with special gifts appear as prophets or evangelists, but the rôle of these remains obscure and it lasted only a short time. When the charisms died out in, or soon after, the Apostolic Age the ministry of gifts came to an end and the duty of preaching devolved on the members of the hierarchy. Some early heretics questioned the exclusive right of the clergy to announce the word of God as did later on Wiclif, Huss, and others, but the Church always maintained it. Laymen might teach Christian doctrine or explain the Scriptures as we read of Origen but not assume the office of public preachers in church. St. Leo the Great in a letter to Theodorus Bishop of Cyprus (Epist. 61, A. D., 453) refers to the audacity of certain monks who usurp the functions of priests; neither monks nor any laymen, he says, ought to preach whatever be their learning or state but only clerics. (19, C. xvi, q. 1.) It is the function of clerics, St. Jerome says, to preach, that of monks to weep and do penance. (Epist. 5, ad Rip.; Dictionary of Christian Antiquities, Preaching.)

The Code likewise declares it unlawful for any

lay person including members of religious communities to preach in church. The same rule applies to public chapels, but not so strictly to private or semi-public ones.

183. 3. All clerics can receive ecclesiastical jurisdiction and consequently permission to preach as the Congregation of the Council explicitly declared. (June 23, 1580.) It has been rarely granted to those in Minor Orders or to Subdeacons; several particular synods positively exclude from the office of preacher any others than deacons and priests. (Bordeaux, 1624; Tours, 1583; Narbonne, 1551; Venice, 1859, c. iii, 3.)

The present law authorizes Ordinaries to appoint to it inferior clerics if they have a reasonable, not necessarily grave, reason to do so, but only in particular cases and not by way of general commission.

4. In the ancient Church deacons did not ordinarily preach in church; they read the Gospel or at times homilies in the absence of priests and Bishops and this, in some documents, is designated by the term *prædicare* but the context shows that it does not refer to sermons strictly so called. (Thomassin, l. c., c. 86, n. 17; v, p. 424.) Exceptions were made as in the case of St. Ephrem of Edessa and others; synods readily permitted them but they remained exceptions. Canonists generally said that deacons may preach only in extraordinary circumstances, when the Bishop or priest can not do so, at their request and by special privilege. (Wernz, n. 33.)

The Code, however, does not make any distinction between deacons and priests in this connection

and implies that if circumstances warrant the Ordinary may give the faculty of preaching to the ones as freely as to the others.

184. 5. As priests did not offer the Holy Sacrifice nor administer the sacraments in presence of the Bishop during the first centuries so did they not preach. The contrary practice introduced first in the East, then in Africa by Bishop Valerius and St. Augustine spread gradually to the whole Church. Pope Celestinus (422–432) still blames the Bishops of Provence for letting priests preach in their presence but this may have been due to some local abuse. The Council of Vaison some years later (529, Can. 2) authorizes country pastors to preach as those in cities do. St. Cæsarius of Arles had priests take his place when he could not preach himself. At first they only read homilies written by him or some of the Fathers but soon they had to compose their own sermons. (Thomassin, iv, p. 118.)

IV. RIGHTS AND DUTIES OF BISHOPS AND PASTORS.

(Can. 1343–1344.)

185. 1. *Bishops.* 1°. As said before Bishops by virtue of their office are bound to preach the Christian doctrine either personally or through their representatives.

2°. They have the right to preach in all the churches in their territory not excepting those which belong to exempt religious.

When the local Ordinary does preach in a certain locality he may forbid any other preaching to the people in the other churches of the same place. He may forbid it also when for a special

or public cause he has some other preacher deliver in his presence a sermon to which the faithful have been invited. (Benedict XIV, De Synodo Dioecesana, L. ix, c. 17, n. vii.)

This rule, however, does not apply to large cities which canonists usually understand to mean cities of over 100,000 people including non-Catholics as well as Catholics.

186. 2. *Pastors.* 1°. Parish priests receive the faculty of preaching with the appointment to the pastoral office.

2°. They assume thereby also the obligation of preaching the word of God to the people every Sunday and Feast day of precept through the year principally at the Mass most largely attended by the faithful.

(*a*) The sermon prescribed here differs from the catechetical instruction obligatory also on all Sundays (Can. 1332) although the two may possibly be combined. (Berardi, l. c., n. 112.) It may consist in an explanation of the Gospel or of some point of Christian doctrine. The term homily by which the Code designates it conveys the idea of a somewhat familiar address rather than of a solemn, formal discourse.

(*b*) A tradition dating back from the very beginnings of Christianity connects spiritual instruction or exhortation with the celebration of the Holy Eucharist and the homily seems to form part of its liturgy; ancient writers, however, like St. Chrysostom, St. Augustine, refer to sermons delivered on other occasions and in the afternoon or evening.

(*c*) The practice of preaching the word of God every Sunday goes back likewise to the first

years of the Church. It became obligatory by custom first and then by written law at least in the seventh century and probably long before. The Council in Trullo (692, Can. 19) enjoins on all who have charge of churches to instruct their people every day and at least on Sundays and Feast days. The Council of Pavia (850, Can. 5) threatens with deposition Bishops who would neglect this duty. The Council of Trent confirming and conpleting the previous legislation commands all those who in any manner soever hold any parochial or other churches having the care of souls, at least on the Lord's day and solemn feasts, personally or when lawfully hindered by competent substitutes, to feed the people committed to them with wholesome words, according to their own capacity and that of their people, teaching them the things which all must know for salvation and announcing to them with briefness and plainness of discourse, the vices which they must avoid and the virtues which they must practice. (Sess. v, c. 2, De Ref.; cf. Sess. xxii, c. 8; Sess. xxiv, c. 4.)

(d) This obligation of preaching and really instructing their people every Sunday is for parish priests a grave and personal one. The present law explicitly states that they can not habitually discharge it through others except for a just cause approved by the Ordinary, such as infirmity, other urgent and important duties.

The Ordinary may authorize also the omission of the usual sermon on some solemn Feast days and likewise occasionally on Sundays for a just cause, as in times of epidemics, in the country during the harvests. The smallness of the audi-

ence, custom, facility for hearing sermons in other churches would not constitute just causes for this.

V. SERMONS IN NON-PAROCHIAL CHURCHES AND IN LENT OR ADVENT. (Can. 1345–1346.)

187. 1. One sermon at the principal Mass would strictly speaking suffice to fulfil the requirements of the common law, and this law does not directly bind others than parish priests or outside of parish churches; but the legislator expresses the earnest desire that in all churches and public chapels a brief explanation be given of the Gospel or of some point of Christian doctrine at the Masses attended by the faithful on days of obligation.

Should the local Ordinary issue instructions to prescribe this it would become binding on all priests whether regular or secular and in all churches even in those belonging to exempt religious.

The third Council of Baltimore (n. 216) commands all who have charge of souls to read the Gospel and, if time permits, give an instruction of about five minutes at every Mass at which the people assist on all Sundays and solemn feasts during the whole year.

2. A writer of the fifth century refers to a connection between preaching and the days of fasting, and apparently the custom of the daily Lenten sermon existed at that time in some places at least. The homilies of St. John Chrysostom on the book of Genesis and those on "The Statues" form a Lenten course of this kind.

The Council of Trent confirming or restoring an ancient discipline ordained that parish priests

should during Lent and Advent announce the word of God daily or at least three times a week if the Bishop deemed it advisable. (Sess. xxiv, De Ref., c. 4.)

The present law does not impose immediately upon pastors the obligation of special preaching during Lent but it directs Bishops to see that during that season and also during Advent if expedient, in cathedral and parochial churches sermons be given more frequently than during the rest of the year, that is, at least two or three times a week.

Canons and other members of a chapter are bound to attend these sermons if they immediately follow the choir service, except for some valid excuse. The Ordinary might use penalties to compel attendance.

VI. MANNER OF PREACHING. (Can. 1347.)

188. 1. *Matter.* Sacred orators should treat of what the faithful must believe and do to save their souls, leaving aside profane subjects and questions so abstruse as to exceed the common understanding of their hearers. "Hence the Creed and the Commandments, the precepts of the Church and the Sacraments, virtues and vices, the duties of the particular states of life, the Day of Judgment and such eternal truths should form the standard material of sacred oratory." (Cong. of Bishops and Regulars, July 31, 1894.)

"If the preacher would wish to treat of matters not strictly sacred, yet always becoming in the house of God he should ask for and obtain permission from the Ordinary of the place. The lat-

ter should grant it only after mature deliberation and for urgent reasons, and never for discussing politics in the pulpit.

"No one may preach funeral eulogies without the previous and explicit permission of the Ordinary who before giving it may insist on seeing the text of the discourse." (Consistorial Cong., June 28, 1917.) In some places these eulogies had occasioned political demonstrations; where this danger does not exist the Ordinary might grant a general permission under certain conditions or tolerate existing customs.

189. 2. *Form.* The Code warns ministers of the Gospel not to exercise their office in persuasive words of human wisdom, nor with profane exhibition of vain and ambitious eloquence but in the showing of the spirit of power, not preaching themselves but Christ crucified.

The Instruction of the Consistorial Congregation contains the following rules: The preacher should ever have in mind and reduce to practice the advice of St. Jerome to Nepotian: read often the Sacred Scriptures or rather never let them leave your hands. To the study of the Bible he should join the study of the Fathers and Doctors of the Church. (n. 22.)

Quotations and testimonies from profane authors ought to be employed with the greatest caution and much more so the sayings of heretics, apostates and infidels; the authority of living persons should never be alleged. Religion does not need such defenders. (n. 23.)

The preacher should not look for the applause of his hearers but he should seek only the salvation of souls and the approval of God and of the

Church. As St. Jerome wrote to Nepotian, when you speak in church let groans and not applause be aroused, let the tears of your hearers be your praise. (n. 24.)

The custom which exists in certain places of using newspapers and posters to advertise the sermon beforehand and extol the merits of the preacher after should be condemned and reprobated absolutely no matter under what pretext of good this may be done. Ordinaries must as far as they can oppose the introduction of this practice. (n. 25.)

The preacher should accommodate himself to the ordinary intelligence of his hearers both in reasoning and in the choice of words. As to delivery and gesture he should observe that modesty and gravity which befit an ambassador of Christ. (n. 27.)

190. 3. *Preparation.* No one should undertake to preach unless he has worthily prepared himself by study as well as by prayer. (n. 119.)

Ordinaries ought to form their clerics to a salutary style of preaching both before and after their ordination to the priesthood. (n. 34.)

They shall take care, therefore, that during their theological course clerics be taught the various kinds of preaching and become acquainted with the models left us in the writings of the Fathers and in the Sacred Books. They shall see to it likewise that clerics learn how to deliver sermons with clearness and that simplicity and gravity which become the word of God and in no way savor of the stage. (n. 35, 36.)

The initial instruction given to clerics in the seminaries must be perfected even after their or-

dination; Ordinaries may prescribe for them that for some years after receiving the priesthood they undergo each year an oral and written examination in preaching conducted in the manner that appears most practical. (n. 38, 40.)

191. 4. *Sanctions.* Should any preacher disseminate errors or scandals the Ordinary ought to deprive him of the faculty of preaching and teaching and inflict on him other penalties also if deemed necessary in accordance with the prescriptions of Can. 2317. Should one teach heresy the provisions of law concerning heretics would have their application. (Can. 2315, 2316.)

In general the Ordinary should withdraw the faculty of preaching from anyone who after admonition continues to show disregard for the laws and regulations of the Church on the subject or who because of his way of living and perhaps without any fault of his own has lost the good esteem of the public so that his ministry has become useless or injurious.

To inforce this discipline the Congregation asks local Ordinaries to institute each in his own diocese a commission of vigilance for preaching, and because the commission can not exercise its vigilance everywhere in the diocese, to obtain particular and precise information from the vicars forane or the parish priests regarding sermons of more than ordinary importance. (L. c., n. 30–33.)

VII. DUTY OF THE PEOPLE. (Can. 1348.)

192. A canon attributed by Gratian to the IVth Council of Carthage (398, 24) and found in the

collection known as *Statuta Ecclesiæ antiqua* threatens with excommunication people who leave the church during the sermon of the priest. (63, D. I, de Consecratione; Hefele-Leclercq, T. ii, p. 102.)

St. Cæsarius of Arles, according to his historian (Vita, c. xii), having noticed that some people left the church after the Gospel so as to escape his long and pressing addresses, ordered the doors closed, for which they afterwards thanked him.

The Council of Trent directs Bishops to remind the people of their obligation of attending their parish church in order to hear the instruction. (Sess. xxiv, c. 4.)

The Code does not mention any obligation but only asks that the people be exhorted and strongly urged to hear frequently sermons or instructions. This might even become obligatory if they had no other way of acquiring a sufficient knowledge of their religion and of their duties.

CHAPTER III

MISSIONS

(Can. 1349–1351.)

193. 1. *Missions to Catholics.* Missions or Spiritual Exercises, with their special preaching and acts of devotion, have proved powerful means of religious revival, strengthening the good and bringing sinners back to the path of duty. The Church wishes that parish priests should frequently give their people the advantage of a mission. The Ordinary must see to it that they do so at least every ten years.

He may prescribe missions even more frequently and pastors, including religious, ought to abide by his decisions in this matter.

2. *Missions to Non-Catholics.* In regularly organized dioceses and parishes the Bishops and pastors have charge of all the people who live within their territory not excepting non-Catholics. They must, therefore, labor for the salvation of these and strive to bring them in the true fold. What means they should use for this purpose the Code does not specify; it only recommends zeal for their spiritual welfare. Special missions for them and distribution of Catholic literature, with-

out speaking of prayer, help to dispel ignorance and prejudice and prepare the way for faith.

194. 3. *Missions among Infidels.* In countries which do not possess as yet a canonically established hierarchy the work of propagating the faith remains under the immediate direction of the Holy See and the Congregation De Propaganda Fide which sends missionaries, assigns to everyone his proper field and supervises their activities.

The Church claims the right to preach the Gospel everywhere and to every creature, but not to force the faith on anyone. She may need at times physical weapons to protect her ministers or her possessions but not to obtain assent to her teachings. For this she uses persuasion exclusively. We find the essentially free character of faith and conversion affirmed by the early Fathers as well as by writers of the Middle Ages and of modern times. (Lactantius, Divin. Inst. 1. v, c. xx; St. Hilary, Liber contra Auxentium, c. iv.) The Code affirms it once more by explicitly forbidding to compel any person whatsoever to embrace the Catholic faith against his will. (Cavagnis, Institutiones Juris Publici Ecclesiastici, Pars Specialis, L. ii, c. 1; Vermeersch, Tolerance, Louvain; Th. Grentrup, Jus Missionarium, Steyl, Holland.)

TITLE XXI

SEMINARIES

(Can. 1352–1371.)

(St. Charles Borromeo, Institutiones ad universum Seminarii regimen spectantes; Thomassin, o. c., P. i, L. iii, c. 2–6; P. ii, L. i, c. 102; Theiner, Histoire des Institutions Ecclésiastiques, Paris, 1840; Pouan, De Seminariis Clericorum, Tournai, 1874; Themistor, L'Instruction et l'éducation du clergé, Trèves, 1884; Degert, Histoire des Seminaires Français jusqu'à la Révolution, Paris, 1912; Catholic Encyclopædia, Seminary.

Icard, Tradition de la Compagnie des Prêtres de St. Sulpice, Paris, 1886; Wernz, ii, 33; iii, 90–94; Bargilliat, De Institutione Clericorum, Paris, 1908; Micheletti, De Institutione Clericorum in Sacris Seminariis, Rome; Constitutiones Seminariorum Clericalium, Torino, 1919.

Cocchi, n. 30; Vermeersch, n. 685; Ferreres, n. 320; Blat, n. 232.)

PRELIMINARY NOTIONS.

195. 1. *Nature and Kinds.* 1°. The Council of Trent adopted the term seminary, used apparently for the first time in this special sense, in the so-called Augsburg Interim (1548) to designate institutions or colleges established by ecclesiastical authority for the spiritual and intellectual training of the diocesan clergy.

2°. A seminary may be purely diocesan and under the control of only one Bishop, or interdiocesan, provincial, national, pontifical according

as it depends on several Ordinaries or on the Bishops of one province or nation, or on the Holy See.

The Tridentine Seminary includes both the classical or collegiate and the theological courses. When each section forms a distinct department one is called the minor, junior, or preparatory, the other the major, senior, or theological, seminary.

196. 2. *Origin.* The Pastoral Epistles contain ample evidence of the solicitude of the Church from the beginning for the proper selection and formation of the clergy; we do not find, however, during the first centuries, traces of any organized system of clerical training. Alexandria, Antioch, Edessa and other cities had schools for the instruction of catechumens and of Christians in general; some clerics, no doubt, attended the lessons of their great teachers. Others had received a liberal education in pagan schools. They completed their preparation under the direction of some priest or Bishop in the exercise of the functions of the minor orders.

Of St. Augustine Possidius tells us that on his elevation to the episcopate he decided to have his clergy live with him and not to promote anyone to holy orders who would not join his community. (Vita, c. 3.) Some historians see in this the beginning of seminaries. (Thomassin, l. c., P. i, L. iii, c. 1–3.) The Bishop of Hippo had numerous imitators in Africa, Italy, Spain, and Gaul. The second Council of Toledo (531, Can. 2; 3, D. xxviii) prescribes the training of young clerics in the house of the church; the fourth (633, Can. 23, 24; 1, C. xii, 1) recommends to

begin that training at a very early age that candidates may not spend their youth in unlawful pleasures but under ecclesiastical discipline. Parish priests had their share, too, in this work. The Council of Vaison (529 Can. 1) urges them to adopt the practice which has already existed in Italy for some time to take young clerics into their house to instruct them and prepare worthy successors for themselves. Monasteries opened also their schools to clerics.

With the rise of the universities which attracted to their courses of Philosophy, Theology and Canon Law the best teachers and scholars, cathedral and monastic schools commenced to lose their importance. The relaxation of regular discipline hastened the decline and by the middle of the fifteenth century they retained little of their former influence. Presbyteral schools had also gone down in numbers and efficiency. On the other hand clerics who attended the universities whilst enjoying great intellectual advantages received no moral or spiritual training. Their life well ordered under strict discipline in the beginning had come now to differ very little from that of ordinary lay students. Thus the great majority of candidates advanced to holy orders with practically no preparation.

When the Council of Trent convened (1546) "for the extirpation of heresy and the reformation of morals" the question of the formation of a learned and virtuous clergy occupied one of the first places among the preoccupations of the Fathers. After long deliberations and several tentative measures they published at last (July 14, 1563) the decree on seminaries which marks

the beginning of a new period in clerical training. (Sess. xxiii, c. 18.)

Various causes delayed the execution of this decree in several countries even till modern times in some of them; in others its prescriptions were carried out only partially or with notable modifications but the Sovereign Pontiffs have never ceased urging conformity to the Tridentine legislation. In numerous instructions particularly in recent years they have completed it and adapted it to present needs yet without substantial changes. (Leo XIII, Letters to the Bishops of Hungary, Aug. 22, 1886; of Poland, March 19, 1894; of Brazil, Sept. 18, 1899; of Italy, Dec. 8, 1902; Pius X, Letter to the Bishops of Italy, Sept. 8, 1907; Instructions, May 10, 1907, Jan. 18, 1908, July 16, 1912; Benedict XV, Ordinamento dei Seminari, Apr. 26, 1920.)

197. 3. *Right of the Church to Establish and Organize Seminaries.* (Can. 1352.) As a religious, autonomous society the Church must possess and has received from Christ the right to select and train her sacred ministers independently of any human authority.

The secular power has repeatedly interfered with this her native right. Towards the end of the eighteenth century Emperor Joseph II in an effort to bring clerical education under state control in Austria, Northern Italy and the Netherlands, suppressed all diocesan seminaries and established in their place in the principal cities so-called central seminaries in which state officials appointed the professors, chose text books, and regulated the discipline. Bonaparte attempted to limit the number of ecclesiastical pupils in

seminaries and to dictate the programme of studies for them. At the beginning of the nineteenth century the Bavarian government would appoint theology teachers in seminaries and regulate all that pertained to studies, discipline, examinations, and dismissal of candidates. In 1873 the German government prescribed for Church students a course in a gymnasium, three years of Theology in a state university, and examinations before state inspectors as conditions for appointment to any ecclesiastical office.

The Roman Pontiffs ever protested against and condemned, these encroachments of the civil authority. (Pius VI, Auctorem Fidei, 1794; Pius IX Syllabus, Prop. 46; Leo XIII, Jam pridem, Jan. 6, 1886.)

198. 4. *Duty of Priests to Foster Clerical Vocations.* (Can. 1353.) The Code expresses it thus: Priests, particularly pastors, shall give special attention to boys who show signs of an ecclesiastical vocation; they shall take pains to keep them away from the contamination of the world, to train them in piety, give them the first lessons in the study of letters and foster in them the germ of divine vocation.

1°. This, whatever may have been the interpretation put by some upon a recent Roman decision (July 2, 1912) implies in the subject, previous to any intervention of superiors, the existence of an interior ecclesiastical vocation or of the germ of a divine vocation. The call to orders by the Bishop will not create it but rather supposes it. As the Code states it further on, before ordination the Bishop must ascertain the vocation of candidates. (Can. 1357, 2.)

2°. Certain signs reveal the presence of this vocation; priests must look for them before directing a boy towards the sanctuary. "Before all things we have to discern among young boys those in whom the Most High has deposited the seed of an ecclesiastical vocation." (Leo XIII, Enc., Sept. 8, 1899.) The Congregation (July 2, 1912) reduced the conditions for a true vocation to fitness and a right intention; the Code and the Council of Trent implicitly require two also when they demand of candidates for admission into the seminary *indoles et voluntas* a character and inclination or disposition of will affording the hope that they will usefully serve in the ecclesiastical ministry (Can. 1363, 1; Sess. xxiii, c. 18.) From their dispositions, inclinations, and conduct a prudent man must be able to judge that they can become useful priests and that they are at least not too unwilling to embrace the clerical vocation. (Vermeersch, n. 687.) God by the action of His Providence must have endowed them with the necessary physical, mental, and moral powers and inclined their will towards the priesthood or given them the willingness to serve the Church, the right intention. (Genicot, Theologia Moralis, 1921, n. 24.)

Vocation does not necessarily consist in a strong interior attraction for the priestly state or a sensible urging of the Holy Ghost thereto but willingness to serve or right intention implies a tendency or inclination of the will towards an object. Hence the recommendation of Pope Pius XI (Aug. 1, 1922, A. A. S., 1922, p. 402): do not send to preparatory seminaries boys or young men who do not show any inclination towards the

priesthood *nullam propensionem voluntatis*. The Consistorial Congregation and the Congregation of Seminaries exclude likewise those who do not show at least an initial inclination toward the ecclesiastical state. (July 16, 1912; Apr. 26, 1920; N. R. T., Jan. 1922, p. 46; Hurtaud, La Vocation au Sacerdoce, Paris, 1911; A. Mulders, La Vocation au Sacerdoce, Bruges, 1925.)

199. 3°. When attentive observation has discovered in a boy at least probable evidence of a divine call the priest should watch over him; as far as possible, for this may often prove difficult at the present time, he should keep him away from the contagion of vice, from the softening if not corrupting influences of worldly pleasures and amusements and associations; develop in him piety, stimulate his love and zeal for higher things, help him with continued advice and discrete direction, and thus foster the germ of vocation which to develop needs a suitable atmosphere, proper surroundings, and assiduous care. All this, however, requires prudence in order not to interfere with the freedom of the candidate and that he may never have the impression that he did not choose the priesthood with complete liberty. Nor should we exaggerate the dangers of neglecting a call which ordinarily contains a gracious invitation but no strict command.

The legislator adds that the candidate should be given the first lessons in the study of letters. This is in full keeping with Catholic tradition. Before the Council of Trent the Church depended largely if not chiefly on parish priests for the training of clerics. With the organization of seminaries conditions have changed considerably, still

even in our own days Leo XIII spoke of presbyteral schools as the first step of the ladder which through the preparatory and theological seminary leads young men to the Altar of Christ and he highly commends the zeal and abnegation of parish priests particularly in country places who devote their spare time to the teaching of boys in whom they have discerned the germs of a clerical vocation. (Letter to French Bishops, Sept. 8, 1899.)

Circumstances will, no doubt, in many cases make it impossible or unnecessary for parish priests to have a class for prospective clerical students. The legislator knows it, still he has inserted this provision in the Code; it forms part of the general legislation of the Church and has the sanction of the supreme ecclesiastical authority. In its present form it is a new law framed in view of actual needs and after mature deliberation. The first text of this canon had only *ad pietatem et litterarum studia incitent,* let them encourage piety and study; but after further discussion and probably at the suggestion of prelates who had been consulted on the matter, the text was so modified as to express the demand that the priest himself give the first lessons. Experience shows, moreover, possibility of compliance in many cases, both in country and city parishes, in our age and country without detriment to other parochial interests. Even if some of these had to suffer some loss, contributing to give one or several priests to the Church should be more than a compensation for it.

200. 4. Pope Pius XI in his letter of Aug. 1, 1922 further directs parish priests to give financial

assistance to needy candidates if they can and if they have not the means to secure the help of well-disposed persons by representing to them the excellence and the wonderful utility of such an act. He takes occasion of this to urge all who have some love for the Church, to favor and promote in all possible manner the *Opus Vocationum Ecclesiasticarum,* the Work of Vocations established for the purpose of enabling worthy candidates to pursue their clerical studies in the presbyteral school and in the seminary.

So much importance does the Holy See attach to this work that in the triennial report on the seminary each Bishop must state whether he has it established in his diocese and if not whether he tries to establish it as soon as possible. (n. 41.)

The details of the organization are left to the prudence of the Ordinary. In some places the Work exists under the form of a society the members of which promise to pray for vocations, to encourage them by word and deed and to help them by means of a small monthly or annual contribution.

I. NECESSITY OF SEMINARIES. (Can. 1354.)

201. 1. Regularly every diocese ought to have a seminary located in the place selected by the Bishop, for the training of a certain number of clerics according to the needs and resources of the diocese.

Seminary, as the whole context clearly shows, must mean here an institution providing for the complete education of the cleric and including the classical as well as the theological course, the

minor and the major seminary. Popes after the Council of Trent have repeatedly insisted on the necessity of a special training for future priests from their early years. (Pius IX, Nostis, Dec. 8, 1849; Singulari quidem, March 17, 1856; Leo XIII, Paternæ, Sept. 18, 1899; Etsi Nos, Feb. 15, 1882; Benevolentiæ, Aug. 1, 1882; Pius X, May 5, 1905; Pius XI, Aug. 1, 1922.) The present law expresses likewise the wish that all aspirants to holy orders receive their training in the seminary from an early age (Can. 972, 1); the diocese, then, must provide the means for this. (Bargilliat, l. c., n. 62, 63.)

In conformity with the decree of the Council of Trent and the directions of the Popes the Second and the Third Councils of Baltimore urged the foundation of a preparatory seminary in every diocese or at least in every province. (III, Balt. 1884, n. 139.)

202. 2. The Tridentine decree supposed that ordinarily the classical and theological departments of the seminary formed but two parts of the same institution; it did not forbid their separation, however; when experience in several countries had shown its advantages the Sovereign Pontiffs approved and even recommended it. (Letter of Cons. Cong. to Bishops of Italy, A. A. S. 1912, p. 491.) The present law positively encourages it also in all, but particularly in, larger dioceses which should have two seminaries, one for the younger boys who follow the course of letters, the other for the students of Philosophy and Theology.

3. If lack of resources or other causes do not

permit the erection of a diocesan seminary or if the one in existence does not possess the proper equipment particularly for the teaching of Philosophy or Theology, the Bishop may send his students to the interdiocesan or regional seminary if the Holy See has erected one, or he may send them to another seminary.

Under the present discipline interdiocesan or provincial seminaries need the approval of the Congregation of Seminaries and Universities which will define also the obligations of the various Bishops towards them.

II. SUPPORT OF THE SEMINARY. (Can. 1355–1356.)

203. 1. If the Bishop has no other resources for the erection and maintenance of the seminary he may:

(*a*) Command pastors and other rectors of churches even of exempt ones to take up a collection for this purpose at stated times in the church;

(*b*) Impose a tax for the seminary in the diocese;

(*c*) If this does not suffice he may annex to the seminary some simple benefices, that is, benefices which do not require residence.

2. The following non-collegiate or corporate persons have to pay the seminary tax or *Seminaristicum:*

(*a*) The *Mensa episcopalis* which consists of the income or revenues of the Bishop as such;

(*b*) All benefices including also those of regulars and those over which someone has a right of patronage;

(*c*) Parishes and quasi-parishes even those that have no other revenue than the offerings of the faithful;

(*d*) Hospitals erected by ecclesiastical authority as by the local Ordinary or the Holy See but not those erected by civil authority or by private persons; nor those which would subsist on alms;

(*e*) Canonically erected confraternities and fabrics of churches provided they have revenues of their own not if they are a merely administrative board;

(*f*) All religious houses even though exempt excepting those which live from alms or those which maintain a college of pupils or teachers for the common weal of the Church, for example, a seminary even for their own subjects, a college open to all Catholics and probably also one reserved to the members of the community.

All customs contrary to these rules are disapproved and suppressed and privileges abrogated; from decisions of the Bishop in this matter there is no appeal at all but only possible recourse to the Holy See.

204. 3. The seminary tax must be general and affect all taxable revenues without exceptions savoring of favoritism, of the same percentage for all, larger or smaller according to the needs of the seminary and not exceeding five per cent of the income. As the resources of the seminary increase it should be lowered.

4. The taxable income is that which remains at the end of the year after deduction of other obligations and necessary expenditures. It does not include the daily distributions which in cathedral or collegiate churches the beneficiaries re-

ceive for actual and active presence in choir. Should their whole income consist of daily distributions one third of it would be free from taxation. The same rule applies to the offerings of the faithful in a parish; regularly they are not subject to taxation but if the income of the parish consists entirely of offerings whether in the form of plate collections, house collections, pew rent, subscriptions, etc., two thirds of them are taxable. Mass intentions are not because of their personal character and because they do not in any way form part of the fruits of the benefice.

To help poor seminaries the Holy See grants sometimes faculties to Bishops to dispense pastors from applying the Mass for the people on suppressed feasts on condition that the stipend for those Masses will go towards the support of the seminary, or to allow them on the same condition to receive a stipend for the second Mass on Sundays.

III. GOVERNMENT OF THE SEMINARY. (Can. 1357–1361.)

205. 1. *The Bishop.* 1°. *Authority.* Under the high control of the Congregation of Seminaries and Universities and with due regard to the directions given by the Holy See, the local Ordinary takes all the measures which he deems necessary and opportune for the administration, government, and progress of the diocesan seminary and watches over their faithful observance.

Every Seminary must have its laws approved by him determining the duties of students and teachers.

2°. *Duties.* The Bishop should take very spe-

cial care frequently to visit the seminary himself, to follow closely the literary, scientific, and ecclesiastical training the students receive, to acquaint himself more fully with their character, piety, vocation, and progress particularly on the occasion of the sacred ordinatian.

These rules apply only to diocesan seminaries; interdiocesan or provincial seminaries have special ones given them by the Holy See.

206. 2. *Seminary Boards.* (Can. 1359.) There should regularly be two boards appointed for diocesan seminaries, one for discipline, the other for the administration of temporal affairs.

Each board consists of two priests appointed by the Bishop with the advice of the chapter or of the diocesan consultors. The Vicar General, members of the Bishop's household, the rector of the seminary, the treasurer and ordinary confessors cannot serve on either board.

The term of office for the members of these boards lasts six years and it would require a grave cause to justify their removal; nothing forbids their reappointment.

The Bishop must take the advice of these boards in all important matters he does not have to follow it; the present law does not require this advice for the validity of the act.

These rules again apply only to diocesan seminaries; the Holy See may dispense from them and it frequently does when the government is entrusted to a religious order or a community.

207. 3. *Seminary Officials.* (Can. 1358, 1360.) 1°. *Number.* Each Seminary should have (*a*) A rector who governs the house in the name of the Bishop and under his authority and

whom all must obey in what pertains to their duties;

(*b*) A treasurer or procurator distinct from the rector to provide for the temporalities under his direction;

(*c*) A spiritual director to lead seminarians in the way of perfection;

(*d*) A sufficient number of professors to teach all the branches included in the curriculum;

(*e*) At least two ordinary confessors. Besides these there should be others appointed for the convenience of the students and whom they may approach when they desire.

When these extraordinary confessors live outside of the seminary if a student wishes to see one of them the rector should call him without in any way asking for the reason or showing any displeasure. If they live in the seminary students must have free access to them, without detriment, however, to seminary discipline.

The rector of the seminary or college does not hear the confessions of students under his care except in particular cases if for grave and urgent reasons the student would ask for it. (Can. 891.)

Confessors have no opinion to express on the promotion of a seminarian to orders nor on his expulsion from the house.

208. 2°. *Qualifications.* (*a*) For the offices of rector, spiritual director, confessor, and teacher in the seminary the Code here simply demands in a general way priests distinguished not only by learning but also by virtue and prudence so that they may serve as examples to the students by word and deed.

(*b*) Several instructions of the Holy See exclude from such position anyone who would manifest tendencies towards modernism, disregard for the Fathers or Scholastics, disobedience to ecclesiastical superiors, love of novelties in historical or biblical matters, little esteem for sacred, and preference for profane, sciences. (H. O., Aug. 28, 1907; Pascendi, Sept. 8, 1907; Præstantia, Nov. 18, 1907; Bargilliat, n. 53–55.)

(*c*) By a decree of the Congregation of religious (June 15, 1909) now embodied in the Code (Can. 642) secularized religious or members of communities who left them with a dispensation from temporary vows or from an oath of perseverance or some other promise under which they had lived for six years, may not without special Indult from the Holy See, be appointed to any professorship or office in a clerical seminary or college.

209. (*d*) No provision of law excludes regulars from holding offices in clerical seminaries. In the Council of Trent the young Bishop of Rossano asked for that exclusion; a little later the Archbishop of Granada proposed on the contrary the addition in the decree of a clause explicitly authorizing Bishops to use regulars as teachers in their seminaries. (Theiner, Acta genuina SS. œcumenici concilii Tridentini, 1874, T. ii, p. 302; Degert, o. c., p. 19, 25.) The Council did not act on either suggestion leaving full freedom to Ordinaries.

In fact when Pope Pius IV in conformity with the prescriptions of the Holy Synod organized the first Roman seminary he entrusted it to the Society of Jesus. Several of his successors followed

a similar course, Benedict XIV, Pius IX, Leo XIII, and others. They also approved societies established for the chief, or exclusive, purpose of training clerics and sanctioned the action of numerous Bishops who availed themselves of the services of these societies.

St. Charles Borromeo one of the best interpreters of the Council of Trent and most faithful observer of its ordinances first called the Jesuits to conduct the seminaries of Milan and afterwards founded for this work a society of secular priests, the Oblates, who although living in common would remain more completely under his authority.

Religious who take the direction of a seminary usually do so on the condition that their superior will have the right to appoint the rector and teachers, they will govern the seminary without the intervention of the diocesan boards and continue in charge unless a serious cause would justify a change.

This involves a limitation of the Bishop's authority and a departure from the common law which the supreme legislator alone can legalize. Hence the reason of the Indult which the Congregation requires for such agreements.

To some societies the Holy See grants a general permission to accept the direction of seminaries without recourse to Rome in each particular case. The Society of St. Sulpice received such a permission temporarily from Pope Pius IX (July 24, 1863) and permanently, *in perpetuum,* from Pope Benedict XV. (Dec. 23; 1921; A. A. S., 1922.) It can govern the seminary in spiritual and temporal matters without intervention of the diocesan boards but an account of the

financial administration must be given at the end of the year to the Bishop in presence of two canons of the cathedral. The Superior General and the other members of the society depend in all things on their respective Ordinaries. The Bishop remains the first superior of the seminary. He has his share in the choice of the rector and receives notification of the appointment of the teachers. (Const., n. 130, 146.)

In all cases a very definite contract should clearly determine the respective rights and obligations of the Bishop and of the community that accept the direction of the seminary; by approval from the Holy See it becomes binding on the successors also. (Thomassin, P. ii, c. 102; Lucidi, De Visitatione Sacrorum Liminum, ii, p. 361; Bargilliat, Prælectiones Juris Canonici, n. 267; Many, Note canonique sur quelques points relatifs a la direction des Séminaries, 1900; Micheletti, De Ratione Disciplinæ in Sacris Seminariis, Marietti, 1919; Vermeersch, n. 708; Cocchi, n. 39; Brucker, Etudes, Nov. 1904.)

IV. ADMISSION INTO THE SEMINARY. (Can. 1362, 1363.)

210. 1. The Ordinary should admit into the seminary none but boys of legitimate birth or duly legitimized; before receiving them he should exact proofs of their legitimacy and also the certificate of baptism and confirmation together with testimonial letters of good character and conduct chiefly from the pastor or superiors of schools.

Sovereign Pontiffs often recommend great care in the selection of candidates and serious investigation of their fitness as regards mental ability,

moral character and conduct, reputation, family connections, etc. (Micheletti, De Institutione Clericorum, xxiv; Constitutiones Seminariorum, art. 322–332.)

The Council of Trent required the age of at least twelve; the Code mentions no specific age and only expresses the wish that future clerics commence their training in the seminary from their tender years which may mean as soon as they have sufficient maturity and the proper preparation. The Bishop may lay down a more definite rule.

2. Dismissal from one seminary or from a religious institute does not, as by the Decree *Vetuit* (Dec. 22, 1905) exclude absolutely from any other seminary, but before admitting such subjects the Ordinary would have to satisfy himself, even by secret information if needed that nothing in their character, conduct, or capacity really disqualifies them for the clerical state.

Superiors asked for testimonials in such cases must furnish them in all sincerity and truthfulness under pain of grave sin.

211. 3. The candidates must show some signs of an ecclesiastical vocation. Causes of various kinds have at times forced Bishops in certain countries to open the doors of their preparatory seminaries to students who had no intention of entering the ecclesiastical state. Because of the pressure of circumstances the Sovereign Pontiffs tolerated the practice but without approving it and as a temporary expedient. The last Popes have urged with special instance return or strict adherence to the Tridentine discipline which the Code confirms.

Leo XIII asked the Bishops of Italy not to lose sight of the special and exclusive purpose of seminaries, *viz.* the preparation for the priesthood. (Dec. 8, 1902.) Pius X enjoined on them to maintain in seminaries the proper spirit and reserve them for clerical students alone. (Pieni l'animo, July 28, 1906.)

Mixed seminaries or colleges have advantages but they have disadvantages also and in the estimation of Roman Pontiffs, supreme judges in such matters the latter far surpass the former. Daily experience shows, says Leo XIII, that mixed seminaries do not realize the Church's ideal; association with lay students habitually causes clerics to turn away from their vocation. (Letter to Bishops of Brazil, Sept. 18, 1899.) In a circular Letter of July 16, 1912; the Consistorial Congregation positively forbids the admission into the seminary even in the lower grades of boys or young men who do not manifest at least some initial inclination towards the priesthood because promiscuity works always to the detriment of clerical students and as experience proves results in the loss of many vocations.

In the Letter of August 1, 1922 Pope Pius XI after speaking of the necessity of fostering ecclesiastical vocations adds that it is his great preoccupation and the object of all his efforts to procure the carrying out of the often repeated commands of Leo XIII and Pius X who demanded that seminaries serve exclusively the purpose of their foundation, *viz.* the training of ecclesiastics. Therefore, he says, no boys or young men should gain admission into them who show no willingness to serve God in the priesthood; their presence

would prove injurious to the clerical students. Moreover, everything in the seminary, spiritual exercises, studies, and discipline ought to tend to the one and same end, the formation of sacred ministers. Let this be, he concludes, a sacred law for all seminaries without exception. (A. A. S. 1922, p. 420.)

The Fathers of the Third Plenary Council of Baltimore (1884, n. 153, 139) had recognized that the practice obtaining in some places of training future clerics in the same colleges as lay students did not fulfil the requirements of the Council of Trent; they tolerated it for reasons of necessity but urged the founding of one strictly preparatory seminary in each diocese or at least in each province as soon as possible. (Bargilliat, De Institutione Clericorum, n. 29; Ordinamento dei Seminari, Roma, 1920, p. 4; Recrutement Sacerdotal, Juin, 1910, p. 184; Juillet, 1922; Jan., 1923, p. 3.)

212. 4. The Council of Trent and Instructions from the Holy See suppose that clerical students even in the lower grades live in the seminary day and night. Day schools do not ordinarily effect the entire separation from the world intended by the Church for aspirants to the priesthood. In recent times Popes have insisted again on the necessity of this entire separation on several occasions. (Leo XIII, Letter to the Bishops of Brazil, Sept. 18, 1899; Pius X, Normæ pro disciplina, passim, n. 163–166.)

The Congregation of Seminaries and Universities asks Bishops to answer the following questions in their triennial report on the state of their seminary: are there any day scholars and if

so why? how many are there? would it be possible to take them as boarders in the near future? Meanwhile what is done for them? (n. 18.) As usual seminary includes both minor and major seminary.

5. The present law does not require students to receive Tonsure and wear the ecclesiastical dress as soon as they enter the seminary; it permits nevertheless application to them of legacies or bequests left for clerical students after legitimate admission into the major or minor seminary, unless the deed of foundation provides otherwise.

V. STUDIES. (Can. 1364–1366.)

213. The Code here can only lay down some general rules; the applications and many details must vary according to times and places.

Naturally the special purpose of the seminary must affect its programme of studies which will differ from that of similar institutions. Still the Congregation directed the Bishops of Italy as far as possible to follow subtantially the one commonly adopted in the country in order that clergymen may have the same kind of general culture as the best among their fellow-citizens and that students may if necessary obtain degrees of recognized value. (May 10, 1906, Normæ Stud.; Micheletti, Constitutiones Seminariorum, art. 478; De ratione studiorum in sacris Seminariis.)

1. *Course in Preparatory Seminaries.* 1°. The first place in the curriculum belongs to Religious Instruction; it should be taught with great care and in the manner best adapted to the capacity and age of the pupils.

2°. Students ought to learn thoroughly the Latin language and the language of the country. Latin has a very special importance as the language of the Church, of her liturgy, legislation, and Theology; as the medium of communication and bond of unity between her members. Clerical students should become so familiar with it as to read it without effort and even speak it with some facility. (Pius XI, Letter Aug. 1, 1922; Ordinamento, vii.)

As public men and preachers of the Gospel they must know their own language perfectly.

3°. In regard to other studies they have to pursue those which form part of a liberal education and become acquainted with subjects which the public expect a clergyman or any man of culture to have some knowledge of, such as history, geography, mathematics, natural sciences, etc. (Bargilliat, n. 102–116; Micheletti, Const., art. 573; Ratio st., XLV.)

214. 2. *Philosophical and Theological Courses.* 1°. The study of Philosophy with cognate sciences must continue for at least two full years.

2°. The Course of Theology should last for at least four complete years and include, besides Dogma and Moral, the study of Sacred Scripture, Ecclesiastical History, Canon Law, Liturgy, Sacred Eloquence, and Ecclesiastical Chant as principal branches, without excluding more secondary ones like Biblical Greek, Hebrew, Sociology, which some official documents call for.

There should be also lessons in pastoral Theology with practical exercises principally regarding the manner of teaching catechism, hearing confessions, visiting the sick, assisting the dying.

The teaching of these various branches does not necessarily require so many different courses; the elements of sociology may be contained in the course of Moral Theology. (Ordinamento, viii, ix; Micheletti, Constitutiones, 591, 608; Ratio Stud., lxxii, cviii; Bargilliat, 117, 173.)

3. *Seminary Professors.* 1°. For the classes of Philosophy, Theology, and Canon Law the Ordinary who has the appointment of the teachers together with the diocesan board, should give the preference, all things being equal, to those who have received a doctor's degree from a university or faculty recognized by the Holy See or in the case of religious to those who have from their superiors testimonials equivalent to a doctor's degree. Merely honorary titles are not taken into account.

2°. In the teaching of mental Philosophy and of Theology the professors should religiously adhere to the method, doctrines, and principles of St. Thomas, which means at least to his fundamental thesis and those which really form part of the Thomistic system, without having to defend all his opinions on secondary points. The Code thus explicitly confirms the very positive and often repeated directions of the last Pontiffs. (Leo XIII, Æterni Patris, Aug. 4, 1879; Pius X, Pascendi, Sept. 8, 1907; Doctoris Angelici, June 29, 1914; Benedict XV, Sacræ Theologiæ, Dec. 3, 1914; Non multo post, Dec. 31, 1914; Pius XI Officiorum Omnium, Aug. 1, 1922; N. R. T., May, July, 1925; Luraud, St. Thomas guide des études, Paris.)

3°. As far as possible at least the courses of dogmatic and moral Theology, Sacred Scripture

and Ecclesiastical History should have so many distinct teachers.

VI. SPIRITUAL LIFE. (Can. 1367.)

215. The Ordinary or his representatives should exact from every one of the seminary students fidelity to the following exercises:

(*a*) Every day, morning and evening prayers in common, mental prayer for some time, Holy Mass;

(*b*) Confession at least once a week; frequent and devout reception of the Holy Eucharist;

(*c*) On Sundays and Feast days, High Mass and Vespers with participation in the sacred ceremonies particularly in the cathedral church if the Ordinary deems it possible without detriment to studies or discipline;

(*d*) Every year a spiritual retreat for several continuous days;

(*e*) At least once a week a spiritual instruction concluded with a pious exhortation.

These canons refer to all seminaries without distinction, except the ones outlining the plan of studies but some of their prescriptions apply particularly to major seminaries. Their enforcement would offer real difficulties in mixed seminaries but the Code does not have in view such institutions. (Vermeersch, n. 701; Cocchi, n. 42.)

VII. EXEMPTION (Can. 1368.)

216. Under the present law seminaries are exempt from parochial jurisdiction; for all who live in

the seminary, the rector or his delegate takes the place of the pastor in all things except matrimonial matters and the hearing of the confessions of students, unless the Holy See should rule otherwise in a particular seminary.

Minor seminaries enjoy this privilege as well as major, provided they really deserve the name of seminary and serve at least principally if not exclusively for the training of the diocesan clergy in accordance with the requirements of law.

The exemption applies to all who are in the seminary, pupils, teachers, sisters, domestics, and probably also to lay students while actually present in the seminary.

By virtue of this concession the rector may administer the sacraments to all under his authority except penance and matrimony as said above; he may dispense them from the Sunday law and the law on fasting and abstinence. He also has the right of burial.

VIII. SEMINARY DISCIPLINE. (Can. 1369, 1370.)

217. 1. The rector of the seminary and all the other officials under him must take care that the students observe faithfully the rules approved by the Bishop, that they strictly conform to the plan of studies and that they form a truly ecclesiastical spirit.

2. They should frequently explain to them the laws of true Christian politeness and by their example encourage fidelity to them; they should also exhort them to observe the rules of hygiene, cleanliness in dress and appearance, affability joined with modesty and gravity.

3. They should carefully watch over the proper discharge by the teachers of the duties of their office, that they do not, for example, waste time in discussion of secondary questions and neglect more important ones, that their teaching remains practical, adapted to the capacity of the average student with a view to his future work.

4. When, for any reason, students live outside of the seminary they should be placed under the care of pious and responsible priests who shall watch over them and form them to piety. (Can. 972, 2.)

IX. DISMISSAL OF STUDENTS. (Can. 1371.)

218. The Council of Trent ordered Bishops to punish severely and even dismiss from the seminary if necessary the froward and incorrigible and the disseminators of evil morals. (Sess. xxiii, c. 18.)

The Code with somewhat increased severity decrees the expulsion of the following categories of students:

(*a*) The froward or disorderly who do not submit to discipline and show notable lack of docility;

(*b*) The incorrigible who can not or will not amend in spite of repeated advices;

(*c*) The seditious who promote insubordination;

(*d*) Those who by reason of their character or conduct do not seem fit for the ecclesiastical state;

(*e*) Those who make so little progress in

studies that there is no hope of their acquiring the required knowledge;

(*f*) Those who offend against faith or morals. Immediate dismissal should be pronounced particularly in this last case.

TITLE XXII

SCHOOLS

(Can. 1372–1384.)

(Thomassin, o. c., P. ii, L. i, c. 92–100; Cavagnis, Institutiones Juris Publici Ecclesiastici, vol. ii, 1. ii, 17–136; Meyer, Institutiones Juris Naturalis, Friburg, 1900, vol. ii, n. 106, 660; Wernz, iii, n. 67; Cocchi, n. 48; Catholic Encyclopædia, Schools; L. Maitre, Les Ecoles Episcopales et Monastiques de l'Occident, Paris, 1866; Drane, Christian Schools and Scholars, London, 1867.)

The Church discharges also her office of teacher through schools or in connection with them. Without, therefore, treating the educational problem under all its aspects the Code here states the canonical principles which bear on this matter considered from the point of view of religion; it affirms the necessity of thorough Christian education with all this implies, then defines the right of the Church to open her own schools and to exercise due supervision over Christian instruction in others.

I. NECESSITY OF CHRISTIAN EDUCATION.

(Can. 1372–1374.)

219. 1. *General Principle.* For all the faithful Christian training should begin from early child-

hood as the fundamental relation and first duty of a rational creature are to the Creator and tender age is most susceptible to the seeds of vice as well as of virtue. The Church can not approve those who would let children grow without religion till they are able to choose for themselves their manner of worshipping God. Religion is not a matter of choice and the religious life of the child needs care and direction as well as his physical or intellectual life.

Not only, then, should not children be taught anything contrary to Catholic doctrine and the principles of morality but religion should occupy the principal place in their education as it should form an integral part of their life and exercise the most potent influence on their activities.

2. *Right and Duty of Parents.* The first responsibility for this moral and religious training of children rests with the parents and those who take their place such as guardians or other substitutes. To them the children primarily belong by the law of nature. It is their sacred right but also most solemn duty to provide for the religious as well as for the physical and intellectual development of their offspring.

220. 3. *Religion in Elementary Schools, Colleges, and Universities.* 1°. In all elementary schools, whether public or private, children should receive religious instruction adapted to their age. The Church considers religious and moral training in a very special manner as the chief purpose of elementary schools. The foundations are then laid down and the life of the child should be given the right direction.

2°. In order that physical, intellectual, and re-

ligious life may grow simultaneously and harmoniously as they should religious instruction in high schools, colleges and universities should become more and more complete and scientific that it may correspond to the mental growth of the pupils.

Ordinaries should select for the teaching of religion in those schools priests of more than common zeal and piety.

Pius X directed them to establish in large towns especially in such as have universities, colleges, and grammar schools, courses of religion for the benefit of the young people attending institutions in which they receive no religious instruction. (Acerbo nimis, Apr. 15, 1905.)

221. 4. *Attendance at Non-Catholic Schools.* 1°. Catholic children should not frequent schools controlled by a non-Catholic religious body and teaching its doctrines; nor neutral schools making profession of ignoring religion; nor mixed schools opened indifferently to Catholics and to non-Catholics.

(*a*) In non-Catholic sectarian schools the false teaching given would constitute a positive and proximate danger to the faith of Catholic pupils.

(*b*) The Church can not approve neutral schools for several reasons: in reality strict neutrality is practically impossible. Even if the programme excludes religion questions constantly come up in history, literature, science, etc. with religious import. The teacher can not absolutely conceal his religious convictions which of their nature must affect every phase of his life. The very separation of religious from secular learning suggests if it does not imply that religion forms

no integral part of life and that science and religion have little or nothing to do with one another; this tends to give a certain idea of religion and contains an indirect religious teaching which a Catholic considers as false because he does not look upon religion as something accessory and optional but as the central, vitalizing, and co-ordinating factor in life. For him knowledge drawn from revelation completes, perfects, and unifies knowledge obtained by the exercise of the natural faculties and the two welded into a consistent and coherent one form the basis of all his judgments on life, its origin, progress, and destiny.

Neutral education must necessarily remain fragmentary, uncertain, and without answer to the fundamental questions ever tormenting the human mind. It is education without Christ and history shows what education and its result society without Christ could produce even in the most brilliant days of ancient Greece and Rome.

(*c*) Mixed schools as understood here, by reason of their composition, can at best only be religiously neutral and the habitual, close association of non-Catholic with Catholic pupils may offer serious inconveniences for the latter.

The Holy See has permitted at times, for grave reasons, the admission of non-Catholic pupils into Catholic schools but only on certain conditions. The school had to remain strictly Catholic and receive only a small proportion of non-Catholics. A decree of the Holy Office forbade to receive them as boarders and absolutely excluded children of apostates. (Dec. 6, 1899.) In all cases superiors must take great care to re-

move all danger of perversion for Catholics. (Ami du Clergé, 14 Mai, 1908, p. 445.)

222. 2°. Under certain circumstances and for sufficiently grave reasons the Church tolerates attendance of Catholic children at non-Catholic schools provided all proximate danger of perversion be removed; but the local Ordinary alone has authority to pronounce in particular cases on the fulfillment of all required conditions, in accordance with the instructions of the Holy See.

In a letter addressed to the Bishops of the United States (Nov. 2, 1875; III. Plen. Balt., p. 280) the Holy Office declared that a sufficient reason for sending children to public schools would generally exist when there was no Catholic school in the place or none that could really meet the needs of the pupils. This must always presuppose absence of any teaching or practice in the public school that would constitute a proximate danger to the faith or morals of Catholic pupils. The latter must otherwise receive proper religious training.

The Congregation adds that parents who neglect to give this religious instruction to their children or allow them to go to schools in which they are in immediate danger of losing their faith or morals, or who send them to the public schools without sufficient cause and without using the means to render the danger of perversion remote and do so when they have a good school in the place or within easy reach, such parents, if obstinate, may not according to the principles of moral Theology be given absolution.

On the other hand the Baltimore Council warns

pastors not to refuse absolution to parents for the mere fact of sending their children to public schools if they do so for a grave reason approved by the Ordinary and take all necessary care to remove all serious danger of perversion. (n. 198.)

II. RIGHT OF THE CHURCH TO ESTABLISH SCHOOLS.

(Can. 1375–1380.)

223. 1. *General Principle.* The Church has the right to establish schools of every kind and grade, elementary and secondary schools, colleges, and universities. This right belongs to private persons under certain conditions; with greater reason may the Church as an autonomous and perfect society claim it.

To provide a moral and religious training for her members certainly belongs to her domain; schools offer her the ordinary and most effective means of effecting this purpose. Moreover, as instruction and education, morality and religion should go togther under pain of loss to each one the Church as the supreme teacher of religion must possess the best qualifications for imparting instruction also in secular branches.

In fact the Church had her schools from the beginning, episcopal schools for the training of the clergy but open to others also, then in the second century the great catechetical schools for the defence of Christian truth; afterwards the monastic schools intended primarily for aspirants to religious life but receiving secular students in what they called the external as distinct from the internal school. Cathedral churches, chapters,

parishes, chantries, hospitals, guilds had their schools all under ecclesiastical control. Bishop Theodulph of Orléans in 797 commands his priests in every town and village of his diocese to give gratuitous instruction. A council held at Rome in 853 directs the Bishops of the universal Church to establish teachers of letters and liberal arts in every episcopal residence. The history of episcopal and monastic schools from the eighth to the twelfth century, says a modern writer, is the history of education itself, for Europe during that period did not have any others. (L. Maitre, o. c., Introduction; cf. Leach, English Schools at the Reformation; Westminster, 1896; Magevney, Christian education in the Dark Ages, New York, 1892.)

224. 2. *Rights of the Holy See in regard to Canonical Universities.* 1°. The Holy See alone has authority for the establishment of a university or particular faculty with canonical or ecclesiastical standing. Private persons or the state can not have that power; individual Bishops or particular Councils do not possess it as the Roman Pontiffs have reserved it to themselves.

Even when entrusted to religious orders universities must have their statutes approved by the Holy See.

2°. No one can confer academic degrees producing canonical effects except in virtue of a power granted by the Apostolic See.

Duly created doctors have the right to wear, outside of sacred functions only, a ring with a gem and the doctor's, or four-cornered biretta. The sacred canons rule, besides, that in the appointment to offices or benefices, Ordinaries

should, all other things being equal, give the preference to doctors and licentiates.

225. 3. *Necessity of Catholic Schools and Universities.* 1°. When in a place no elementary or secondary schools exist that give the proper moral and religious training to the young, local Ordinaries must take care to have them established, and the faithful should help them according to their means.

In the United States Catholics had hoped after the Revolution to come to an understanding with their non-Catholic fellow-citizens and build up together a system of education satisfactory to all but experience soon showed the futility of all efforts in that direction and the necessity of organizing separate Catholic schools.

In a Pastoral Letter written after the first Catholic synod Bishop Carroll dwells on the need of a pious and Catholic education of the young to insure their growth in the faith.

The First Provincial Council of Baltimore (1829, n. 34) declares it "absolutely necessary to establish schools in which the young may be taught the principles of faith and morality while they learn letters."

The First Plenary Council of Baltimore (1852, n. xiii), considering the very great evils resulting from deficient training in youth, exhorts Bishops and entreats them by the Mercy of God to do all in their power to have a school erected in connection with every church in their diocese.

The Second Plenary Council (1866, Tit. IX) confirms this legislation pointing out more in detail its necessity and the means of carrying it out.

The Third Council (1884, Tit. VI) after a

thorough discussion of the question of Christian education enacts the following decrees:

(*a*) Parishes that have not as yet a parochial school must, within two years of the publication of the decree unless because of serious difficulties the Ordinary grants a delay, build one and support it permanently.

(*b*) A priest who by his serious negligence would prevent the erection of the school within the prescribed time or its proper support and in spite of admonitions from the Ordinary would continue to do so deserves removal from his parish.

(*c*) A parish which would fail to co-operate with its priest in the erection or support of the school rendering the latter impossible should be reprimanded by the Ordinary and compelled in a prudent but effective manner to give the necessary assistance.

(*d*) All Catholic parents should send their children to the parish school unless they sufficiently and clearly provide for their Christian training at home or in some other Catholic school or, for legitimate causes approved by the Ordinary and with proper precautions they send them to other schools. What school may be considered as Catholic is left for the Ordinary to decide.

2°. Likewise when the public universities are not sufficiently Christian in their teaching or their spirit it becomes desirable if not necessary to have a strictly Catholic university, in the province or country.

The faithful should not fail to lend their assistance according to their means, in its foundation and support.

The legislator expresses the desire that Ordinaries should send clerics to universities or special schools founded or approved by the Church, there to complete their studies particularly in Philosophy, Theology, and Canon Law and obtain the academic degrees. In this Ordinaries should proceed prudently and select for higher studies only clerics excelling in talent and piety.

Ecclesiastics may not attend secular universities except for grave reasons and with permission from the Ordinary.

Leo XIII and Pius X warned Ordinaries on several occasions to grant this permission sparingly, only for serious causes, to well-chosen subjects who have already completed their philosophical and theological courses (Cong. of Bishops and Regulars, July 21, 1896; Encyc. Pascendi, Sept. 7, 1907; Motu Proprio Sacrorum Antistitum, Sept. 1, 1910). Benedict XV confirmed the legislation of his predecessors (Consis. Cong., Apr. 30, 1918) and added the following provisions: (*a*) Ordinaries should grant permission to attend lay universities only to clerics already promoted to the priesthood and who both by their talent and their virtue give promise of reflecting credit on the ecclesiastical body;

(*b*) In granting it they should have nothing else in view than the good of the diocese and the preparation of good teachers for Catholic institutions;

(*c*) Such ecclesiastics shall not be dispensed from the examinations prescribed for young priests, secular or religious (Can. 130, 590);

(*d*) After their course at the lay university those clerics remain under the authority of their

Ordinary as before; they may not without his consent and still less against his will accept any secular office.

While attending the university they should live in a seminary or religious house or with some priest unless they can reside with their parents.

All these rules apply to regulars as well as to seculars. (A. A. S., 1918, p. 237; Canoniste, Mai, 1918, p. 266; Bargilliat, Institutio Clericorum, art. xix; Cocchi, 54.)

227. 3°. Catholic laymen may find it often necessary to attend secular universities; the Code has no special provision for these cases, they come under the general principles of divine right on the obligation of avoiding dangers of perversion or sin and under the canonical rules on attendance at non-Catholic schools, with this difference that here excuses may exist more frequently, for trained minds the danger of perversion may more readily be removed and in the higher grades secular instruction and religious formation are not so closely connected. (Cavagnis, o. c., p. 172; Blat, n. 259.)

For English Catholics, after much controversy, the Holy See declared it permissible to attend the universities of Cambridge and Oxford on several conditions and amongst others that provision would be made for a resident chaplain and for courses of lectures on Catholic Philosophy, Church History and Religion. (H. O., March 26, 1895; Cong. Prop., April 17, 1895; cf. Cong. Prop., Aug. 6, 1867; Jan. 30, 1885; Life of Cardinal Manning, E. D. Purcell, vol. ii, p. 288; Life of Cardinal Vaughan, J. G. Snead-Cox, vol. i, p. 468, ii, p. 70–86.)

III. RIGHT OF THE CHURCH TO SUPERVISE RELIGIOUS TEACHING. (Can. 1381–1383.)

228. 1. The teaching of religion in any school, whether public or private, elementary, secondary, or superior comes under the authority of the Church and is subject to her inspection. As the divinely appointed guardian and interpreter of revealed truth she must have the right to regulate all that pertains to the imparting of religious knowledge and see that Christ's doctrine is transmitted to the faithful without adulteration and diminution.

2. Consequently local Ordinaries have mission to watch over all the schools in their territory that nothing contrary to faith or morals be done or taught in them. They have to exercise this vigilance over state schools also when Catholic children attend them and whenever the interests of religion are at stake but they must do so discreetly and prudently.

3. They have the right likewise to approve the teachers and text books of religion; in regard to other matters they can exact the removal of the teachers or text books that offend against faith or morals and in general the suppression of anything calculated to exercise a detrimental influence over pupils or lessen in their minds the respect they ought to have for religion.

4. For the same purpose of doctrinal superintendence local Ordinaries may either personally or through delegates visit any schools, colleges, or universities, oratories, orphanages, clubs, and other institutions or organizations having any educational character. The visitation extends only to what concerns moral or religious training.

Schools conducted by religious are also subject to this episcopal visitation. The common law excepts only schools intended exclusively for professed members of an exempt order; this does not include scholasticates. Others may enjoy the privilege by apostolic concession.

The Code renews here the prohibition for superiors of colleges to hear the confessions of the pupils except when these ask for it in some particular cases for grave and urgent reasons. (Can. 1383, 891.)

TITLE XXIII

CENSORSHIP AND PROHIBITION OF BOOKS

(Can. 1384–1405.)

(Wernz, iii, n. 86–131; Périés, L'Index, Paris, 1898; T. Hurley, Commentary on the present Index Legislation, Dublin, 1907; Vermeersch, De prohibitione et censura librorum, 1906; Epitome, n. 720; Cocchi, n. 57–73; Blat, n. 269–295; Ferreres, n. 380, 406; G. P. Putnam, The censorship of the Church of Rome, Putnam, New York, 1907.)

INTRODUCTORY NOTIONS (Can. 1384.)

229. 1. *Power of the Church.* The propagation and preservation of Christian faith and morals with which Our Lord has entrusted the Church require in her the right to take the means necessary to prevent and stop the spread of pernicious doctrines; she may, then, exact of her subjects that they submit their books to her authority for approval before publication and for a just cause she may forbid them to read certain books no matter by whom published.

2. *Scope of the Legislation.* Except for some indication to the contrary found, for example, in the text or the context, the rules enacted in this Title regarding books apply also to newspapers, periodicals, and other writings in whatever form

they may appear, whether as booklets, pamphlets, leaflets, discourses, conferences, poems, etc. whether printed or lithographed as long as they are published, that is, offered for general circulation, made accessible to all and not reserved to a limited number of readers like the lessons which a professor distributes to his pupils and possibly to a few other persons.

This extension of the meaning of the term, book by the Code holds only for the legislation contained in this Title and it admits of the exceptions which the nature of the case or the wording of the law may call for.

The distinction made by canonists between book and booklet loses, however, much of its importance. For a book they require some bulk, about 160 pages in-8 or 320 in-16 and also unity of subject. A magazine composed of independent articles, although of sufficient size does not constitute a book, nor a collection of papers bound together unless they treat of connected subjects so as to form a whole or a treatise.

230. 3. *Development of the Discipline.* The Church has at all times exercised this right of censorship or prohibition over books. St. Paul frequently warns Christians against the dangers of intercourse with heretics (Rom. xvi, 17; Titus iii, 10) and he encouraged if he did not order the burning of astrological books at Ephesus. (Acts xix, 19.)

The Council of Nicæa (325) condemned the work published by Arius under the title of *Thalia.* (Socrates, E. H., i, 9.) Pope Anastasius condemned the works of Origen (400), Celestinus those of the Nestorians (431), Leo I those of

the Manicheans and Priscillianists. In 496 Pope Gelasius drew up a list of forbidden books continued and completed by Gregory the Great, Hormisdas, and their successors through the Middle Ages.

Naturally with the invention of printing (1450) the danger from bad books became greater. As a preventive measure Alexander VI (1501) ordained that henceforth printers should submit all publications to the previous censure of the Ordinary. In spite of this, objectionable litterature continued to spread and Bishops found it necessary to prepare lists of dangerous works for the guidance of the faithful. The first catalogue of this kind issued by the Roman Church was that of Paul IV (1559). Soon, however, it proved too strict and at the same time insufficient.

It had now become impossible to proceed against all pernicious productions individually. The Fathers of the Council of Trent formulated and Pius IV promulgated (1564) ten rules by which to judge the various classes of publications; thus they condemned all works of heresiarchs, all works of heretics treating of religious matters, etc.

The Congregation of the Index organized shortly after for the enforcement of this legislation completed and modified it from time to time, usually in the sense of greater leniency. Still even with those successive adaptations in the nineteenth century it no longer met the needs of modern society and many prelates asked for a thorough revision. The Vatican Council began the work but time did not permit its completion. Leo XIII took it up again and on Jan. 25, 1897 he

published the Const. *Officiorum ac Munerum* in which he summed up the whole legislation on the subject in 49 articles or rules. The substance of this Constitution has passed into the Code and although superseded by the New Law it will serve to interpret it in all that they have in common.

Leo XIII treated first of the condemnation of books, then of censorship; the Code reverses the order and begins with Censorship.

CHAPTER I

CENSORSHIP OF BOOKS

(Can. 1385–1394.)

Previous censorship serves as a preventive measure against the possible spread of error or moral corruption. It consists in an examination of a work and a judgment passed on it ordinarily followed by concession or refusal of permission for its publication.

This permission does not imply approval of the book or endorsement of its teachings but only absence of anything in it liable to prove injurious to the faithful.

I. WORKS SUBJECT TO CENSORSHIP. (Can. 1385.)

231. 1. The following works whether published by clerics or laymen must previously be censored and authorized by proper authority:

(*a*) Books of Holy Writ or texts of the Sacred Books, annotations to or brief explanations of them in whatever form as footnotes, marginal notes, etc., whether printed separately or not, and commentaries upon them;

(*b*) Books treating of Holy Scripture such as works of Introduction, general or special, of exe-

gesis, of criticism; books treating of Theology dogmatic, moral, or ascetic, of Church History general or particular, Canon Law, Natural Theology, Ethics, or other such moral or religious disciplines like sociology if considered from the ethical point of view;

(*c*) Books or Booklets of prayers, of devotion, of religious instruction either moral, ascetic, or mystic even though they may seem to foster piety. This would include prayer-books, catechisms, spiritual treatises, not works discussing these matters in a merely scientific manner;

(*d*) In general any writing, whatever its form or size, that contains something of special importance for religion or morality.

A pamphlet might have only one page on a subject of this kind and deal with it only incidentally, it would come under this rule none the less. The importance of the subject may arise not only from its intrinsic nature but also from extrinsic, local, or temporary circumstance, political issues involved, heated controversies going on, etc.

As in one of its provisions this law uses the word book, in another it adds booklet and in the third it includes all writing some canonists would take the terms book and booklet in their strict, not comprehensive, sense.

(*e*) Sacred images, in whatever manner printed, whether engraved, lithographed, photographed, etc., whether old or new, whether published with or without prayers.

They must be printed; oil paintings do not fall under this rule, nor statues, nor probably medals.

The sacredness of the images depends not simply on the subject they represent but also on their

destination. An artistic picture reproduced without any religious purpose would not need ecclesiastical approval even though representing a religious subject; nor do mortuary or ordination cards.

232. 2. Permission for publication of these books or images may come from the local Ordinary of the author, from the local Ordinary of the place of publication or from that of the place in which the book or image is printed. Local Ordinary includes also the Vicar General.

The author has the choice between these three Ordinaries but if one of them has refused the permission he can not obtain it from one of the others without letting him know of the previous refusal.

Religious with simple or solemn vows need the authorization of their superior besides, or even before, that of the local Ordinary. For them the local Ordinary is the one who has jurisdiction over the place in which is situated the house to which they belong.

II. SPECIAL RULES FOR ECCLESIASTICS OR RELIGIOUS AND FOR PERIODICAL PUBLICATIONS. (Can. 1386.)

233. 1. Under the present law secular clerics need the consent of their own Ordinary, and religious exempt or non-exempt the permission of their major superior and of the local Ordinary for the publication also of books that have no religious character and for which the preceding canon would not require previous censorship like those on science, literature, profane history, etc.

This consent differs from censorship; it does

not necessarily imply an examination of the work and may depend on other reasons than its intrinsic value; it may be given in a general manner, implicitly, tacitly, and sometimes presumed. Censorship by the Ordinary of the place of publication does not dispense from obtaining the consent of the author's own Ordinary.

According to some canonists, in this case, a religious might probably consider the Ordinary of the place of publication or printing as his local Ordinary. (Blat, n. 274; Vermeersch, n. 728.)

2. The same consent and permissions are needed by the same persons for writing in newspapers, magazines, or periodicals of any kind and for undertaking their direction.

The law probably refers here to somewhat important or regular contributions not to an occasional, brief communication. It applies to all periodicals, college papers, parish bulletins, etc. as the text suggests no distinction.

3. Neither clerics nor laymen should publish anything in newspapers or periodicals which combat religion or morality, except for a just and reasonable cause approved by the Ordinary.

This law concerns periodicals which attack religion in a somewhat habitual manner but the prohibition extends to all contributions without distinction, articles, interviews, notices, announcements, advertisements; all of them constitute a co-operation in evil work.

Any just and reasonable cause will suffice to justify an exception to this ruling such as the necessity of answering a false accusation, of correcting a wrong impression, of presenting the Catholic side of a question, serious business inter-

ests, etc. But in order to avoid the danger of delusion regularly the Ordinary should pronounce on the validity of the cause. In urgent cases his approval could be presumed.

III. SPECIAL PERMISSIONS FOR THE PUBLICATION OF CERTAIN CLASSES OF BOOKS. (Can. 1387–1392.)

234. 1. The permission of the Congregation of Rites is required for the publication of whatever pertains in any way to the beatification or canonization of Saints, that is, to the processual acts concerning these causes.

2. For the publication of all books, booklets, leaflets containing grants of indulgences permission must be obtained from the local Ordinary. This should naturally mean the Ordinary of the place of publication; some canonists, however, understand it of the same three Ordinaries as for censorship.

Mortuary or ordination cards, although including prayers with mention of indulgences attached to them are not considered as leaflets of indulgences coming under this rule.

Without the express permission of the Holy See no one may publish in any language, authentic collections of prayers and pious works enriched with indulgences by the Holy See, or the list of the Apostolic indulgences, or summaries of indulgences either previously compiled but never approved or now compiled for the first time from various grants.

Each Pope publishes at the beginning of his pontificate the list of indulgences which he or those having that power attach to various objects by the

Apostolic Blessing, hence the name of Apostolic indulgences.

235. 3. For a new publication of the decrees of Roman Congregations permission must be granted by the respective Congregation and all conditions observed which the Prefect may lay down in giving the authorization.

4. In new editions of liturgical books or parts thereof and of litanies approved by the Holy See the Ordinary of the place in which these works are printed or published must testify to their conformity with the officially approved texts.

The principal liturgical books are the Roman Missal, Ritual, Breviary, Pontifical, Ceremonial, and Ceremonial of Bishops. The rule applies also to portions of these books when published separately but not, for example, to books intended for private devotion although containing prayers taken from the Missal or the Breviary together with others.

The Holy See has approved the litanies of the Holy Name, of the Sacred Heart, of the Blessed Virgin and of St. Joseph besides the litanies of the Saints and of the dying found in the Breviary and the Ritual.

The present law no longer requires the approval of the Congregation of Rites for the publication of liturgical books.

Special decrees of that Congregation regulate the reprinting of plain chant books. (Aug. 11, 1905; Jan. 25, 1911.)

236. 5. Translations of the Sacred Scriptures into the vernacular may not be printed unless they have the approbation of the Holy See or unless they are published under the supervision of the Bish-

ops and with notes taken chiefly from the Fathers of the Church and learned Catholic writers.

The law speaks of translations into the vernacular or into modern living languages not of old versions like the Syriac or Latin. It applies to portions, as well as to the whole of, a book. Custom, however, permits the publication without notes of the Sunday Gospels and Epistles and also in some places of such parts of Holy Writ as the Book of Tobias. (Blat, n. 279.)

Versions approved by the Holy See do not require further additions but those for whose fidelity the Ordinaries vouch must be accompanied with notes explaining more difficult passages which common readers might misunderstand.

These notes should be taken from the Fathers and reliable Catholic scholars chiefly but not exclusively, hence it does not seem forbidden to quote also good non-Catholic writers at least in questions pertaining for example, to archæology, geography, etc.

The annotations may be taken from the Fathers literally and directly or indirectly and virtually by using a commentary or paraphrase based on their teaching and inspired by it.

IV. EXTENT OF THE APPROBATION. (Can. 1392.)

The approbation or permission of publication of the original text of a work does not serve for translations of that work into other languages nor for other editions of the same. Translations and new editions of a work already approved need a new approbation and this whether changes have

been made in the new edition or not, the law does not distinguish. A second edition of a work might become inexpedient for reasons independent of its intrinsic character or worth.

Articles extracted from periodicals and published separately are not considered by the legislator as new editions and need no new approbation even should they develop into a book since the law contains no restriction.

V. DIOCESAN CENSORS. (Can. 1393.)

237. 1. Every episcopal court ought to have its officially appointed censors for the examination of intended publications.

2. In the discharge of their office the examiners should set aside all personal considerations and preferences and keep ever before their minds as their only norm of appreciation the dogmatic teachings of the Church and the commonly received Catholic doctrines as found in the decrees of General Councils, in the Constitutions and Decisions of the Apostolic See, and in the unanimous declarations of approved doctors.

They should not, therefore, condemn opinions which the Church tolerates even though they seem to them improbable; they pronounce directly on the orthodoxy or doctrinal soundness of a book in the light of Catholic teaching rather than on its opportunity although the Bishop may have to consider this in his decision. (Benedict XIV, Const. Sollicita § 17.)

3. The censors should be taken from both the secular and regular clergy and be men of mature age, learned, prudent, moderate in their views,

safely keeping the golden mean between excessive rigor and unwise leniency.

4. The censor must give his opinion in writing; if it is favorable the Ordinary authorizes the publication. His permission or imprimatur must be preceded by the verdict of the censor over his signature. Only in extraordinary and rare cases may the Ordinary permit the omission of the censor's name if he deems it prudent.

5. The name of the censor should not be made known to the author until he has given a favorable decision. In the case of an adverse verdict the name should never become known.

VI. FORM OF THE PERMISSION OR IMPRIMATUR.

(Can. 1394.)

238. 1. The permission for publication or imprimatur should be given by the Ordinary in writing and printed at the beginning or end of the book, leaflet, or image with the name of the grantor and the place and date of the concession.

This apparently applies only to the imprimatur strictly so called which supposes an examination of the book. Simple permissions for the publication of works not subject to censorship or already censored by another Ordinary do not seem to require any special formality. (Vermeersch, n. 729.)

Under the present law books published with an imprimatur do not have to bear on the first page the name of the author and printer or editor with the date of publication as prescribed in the Const. *Officiorum ac Munerum,* (43.)

2. If the Ordinary feels compelled to refuse

the imprimatur he should give his reasons to the author on request unless some grave cause prevents him from doing so; he is the judge of the gravity of the causes but recourse to higher authority remains always open.

CHAPTER II

PROHIBITION OF BOOKS

(Can. 1395–1405.)

The natural and divine positive, as well as ecclesiastical, law forbid the reading of books dangerous to faith or morals. Here we deal only with the ecclesiastical prohibition.

I. COMPETENT AUTHORITY. (Can. 1395–1396.)

The right and duty to prohibit certain books for a just cause belongs in the Church to the appointed guardians of faith and morality:

239. 1. To the supreme teachers and rulers, the Popes and General Councils. The Popes may exercise this power personally as they have done in a few cases; more frequently they do so through the Roman Congregations, particularly the Holy Office of which the former Index Congregation has become a department. (Can. 247.) Other Congregations occasionally take action against books dealing with questions which belong to their province.

Condemnations pronounced by the Holy See hold everywhere and for all Christians and they affect not only the original but also translations in any language.

2. To particular Councils and local Ordinaries. Their decisions have binding force only for their subjects (Can. 14, 94) and within their own territory except when issued in the form of a particular precept. (Can. 24.) They admit of recourse to the Apostolic See, without suspensive effect, however; the prohibition remains obligatory pending the sentence of the higher court. More probably they do not now apply to exempt religious.

3. To Abbots of independent monasteries and to the Superiors General of clerical religious orders: by the present law these may, with the assistance of their chapter or of their consultors and for a just cause, forbid books to their subjects.

In urgent cases other superiors like provincials may, with their counsellors, exercise the same power but with the understanding that they will report the matter as soon as possible to the Superior General.

All superiors even in female institutes may in a particular case forbid the reading of a certain book to one of the religious; such an act does not require ecclesiastical jurisdiction but only domestic authority.

II. DENUNCIATION OF DANGEROUS BOOKS. (Can. 1397.)

240. 1. Since bad literature constitutes a grave danger to the individual and to society the law of charity and self-preservation demands that every man should strive to prevent its spread as far as his position allows. The Church, then, is only recalling an obligation of the natural and divine

positive law when she reminds all the faithful, particularly clerics and those constituted in dignity or distinguished by learning, of their right and duty to denounce to the local Ordinaries or to the Apostolic See, that is, to the Holy Office, books which they consider pernicious and liable to do serious injury to souls. More specially does this concern Legates of the Apostolic See for the territory committed to their care, local Ordinaries and Catholic universities which have the mission of defending and propagating sound doctrine.

2. The denunciation of a bad book should not only give its title but also as far as possible the reasons which render it objectionable and seem to call for its individual condemnation.

3. Those who receive the denunciation must keep the name of the denouncer strictly secret that he may not suffer for discharging a painful duty. According to the rules of the Holy Office the Secretary of the Congregation may let the author know of the complaints against his book but without any mention of their source.

4. Local Ordinaries must either personally or, if necessary, through capable priests, watch over the books published or sold in their diocese.

5. They should refer to the Holy See those which, perhaps because of the delicate or difficult character of the questions treated, require a more subtle examination or those the condemnation of which will not have the desired effect unless it proceeds from the supreme authority because possibly of the name of the author or of his large following.

III. EFFECTS OF PROHIBITION. (Can. 1398.)

241. 1. A book forbidden, whether by general law or special Apostolic decree, may not without permission be published, read, retained, sold, translated into another language, or communicated to others in any way.

(*a*) The prohibition to publish concerns the author, the editor, and the printer not workmen; these come under the general principle on co-operation not under this provision of the ecclesiastical law.

(*b*) According to some good interpreters one who simply hears a book read by another does not strictly speaking read it, nor one who goes over the book but without understanding it. (Cocchi, n. 67; Genicot, n. 455; Noldin, n. 691, 702; St. Alphonsus, vii, n. 292.)

Moralists try to determine what would constitute grave matter in this; for some a few lines would suffice, others require four or six pages; for others it depends on the character of the passage read which may or may not contain the objectionable teaching. (Noldin, n. 689, Genicot, l. c.)

(*c*) Retaining a book implies keeping it in one's possession permanently or temporarily, as one's property or as a deposit or a loan. Librarians do not retain in this sense the books committed to their care.

(*d*) A person who has a forbidden book may dispose of it by sale or exchange; he may destroy it or obtain permission to keep it or leave it in the hands of one who has that permission.

(*e*) Translations of a forbidden book remain

forbidden even if they leave out the objectionable passages.

(*f*) Communicating a book to others includes loaning it, giving it in exchange, or freely and reading it to them.

2. A book forbidden, in whatever manner whether by general law or particular decree of the Holy See or of the Ordinary may not be published again except after proper corrections and with the permission of the one who condemned it, his successor or superior.

IV. FORBIDDEN BOOKS. (Can. 1399.)

242. Books may be prohibited in groups, by general law or individually, by special decree of the Sovereign Pontiffs, of the Holy Office, or of Ordinaries.

1. Books forbidden by general law, *ipso facto*. The rules promulgated first by Pius IV, then with various modifications by successive Popes and by Leo XIII in the Const. *Officiorum ac Munerum* (1896) have been embodied with further slight changes in the Code which declares forbidden twelve categories of books, taking this term to include, as stated before, booklets, leaflets, periodicals, etc., except for some indication to the contrary; they are the following:

1°. Editions of the original text and of ancient Catholic versions of the Sacred Scriptures, also of the Oriental Church, published by non-Catholics; and likewise translations of the Scriptures in whatever language made or published by non-Catholics.

Reasons of prudence dictate this measure be-

cause of the danger of error or inaccuracy, involuntary or wilful, which exists in all such works.

2°. Books of any writers defending by argument heresy or schism or aiming in whatever manner at undermining the foundations of religion, directly or indirectly, by reasonings, insinuations, ridicule, or otherwise.

3°. Books which attack religion or good morals, systematically and deliberately. An incidental even though malicious remark would not suffice to bring a book under this condemnation.

Religion means here not only the Catholic Church or supernatural revelation but also the divine worship as such.

Morality includes all that pertains to right living, particularly purity. Pornographic literature, works defending divorce, birth control, etc. fall under this law.

243. 4°. Books by any non-Catholics, baptized or unbaptized, treating professedly, not incidentally and in passing, of religion and religious disciplines including, for example, Church History and Canon Law, unless it be certain that they do not contain any errors. The presumption stands against them but it yields to truth; the testimony of a reliable man suffices to give the required certainty.

5°. Texts of the Scriptures and annotations to or commentaries upon them published without the prescribed previous censorship (Can. 1385, 1); versions of the Bible into any of the modern languages printed without the approbation of the Holy See or the permission of the Bishop and the notes which in such cases should accompany them (Can. 1391); books and booklets narrating

new apparitions, revelations, visions, prophecies, miracles, or introducing new devotions never approved by the Church formally or tacitly, even though destined to remain private, if these books or booklets are published without the censorship prescribed by the canons. (1385 § 1, n. 2.)

Since the present law uses the terms books and booklets not, like the former one, the more comprehensive expression, writings, it does not include leaflets, periodicals, or newspapers.

A simple account of some extraordinary occurrence or cure without attempt to maintain its supernatural character would not fall under this rule.

We find here no mention of books or booklets of prayers or of works on ascetic and mystic theology as becoming prohibited if published without previous censorship.

244. 6°. Books which attack or ridicule any of the Catholic dogmas; which defend errors condemned by the Holy See, that is, the Pope or Roman Congregations, chiefly the Holy Office and the Biblical Commission, such as errors pointed out in the Syllabus, in the decree Lamentabili, etc.; books which disparage divine worship, that is, worship paid to God, to the Saints, to relics, images; which tend to undermine ecclesiastical discipline, fostering discontent, encouraging disobedience to laws, questioning their legitimacy to destroy their authority; which deliberately use opprobrious language in speaking of the ecclesiastical hierarchy or the clerical and religious state not simply of one individual cleric or religious order.

7°. Books which teach or encourage any kind

of superstition, fortune-telling, sorcery, magic, communications with the spirits or evocations and similar practices.

8°. Books which defend the lawfulness of duelling, of suicide, or divorce or maintain the usefulness and harmlessness to religious and civil society of Masonic and other similar sects which plot against Church or State, like nihilists, anarchists, bolshevists, extreme socialists.

245. 9°. Books which of set purpose treat of, narrate or teach, obscene or lascivious things as such, for the purpose of arousing passions and exciting lust.

This applies to pornographic literature of all kinds. Novels which describe unlawful pleasures do not necessarily treat of impure things *ex professo* and although possibly dangerous and forbidden by the natural law do not, however, fall under this canon.

The former discipline allowed professors of literature to read classical books of a somewhat obscene character, if necessary because of their literary merit. The present law does not make any exception for them; they may if needed obtain the required permission.

10°. Editions of liturgical books approved by the Holy See which because of alterations do not agree with the official authentic editions.

The differences must bear on something of importance not simply on secondary details which do not modify the meaning or affect the order as such.

11°. Books propagating apocryphal indulgences or indulgences proscribed or withdrawn by the Holy See.

We can find the list of authentic indulgences in the Collection published by the Congregation, and the principal prayers enriched with indulgences in the *Racolta* published also with official sanction.

12°. Images, in whatever manner printed, of Our Lord, the Blessed Mother, the Angels, the Saints, and other servants of God, if not in keeping with the mind and decrees of the Church. (Trid., Sess. xxv, De invocatione Sanctorum et sacris imaginibus; Benedictus XIV, De Beatificatione et Canonizatione Sanctorum, Lib. iv, P. ii, c. 21; H. O., June 3, 1891; March 30, 1921.)

246. 2. *Books Forbidden by Special Decree.* 1°. The general prohibitory laws strike by far the largest number of dangerous books and in fact practically all; but for some of them it may not appear clearly that they come under one of its provisions, hence the necessity of singling them out by special decree as a warning to the faithful who might not realize their perniciousness at least not to its full extent.

Then, at times, local Ordinaries or other persons refer to the Holy Office books which they deem harmful and they ask for a judgment and remedy. The Congregation has to examine them and pronounce condemnation if the case calls for one.

The Holy See, however, does not aim at condemning individually all really bad books, or necessarily the worst ones among them. Often the maliciousness of these appears with sufficient evidence to render further warning unnecessary. Causes extrinsic to the book frequently bring about its individual condemnation, as for example, de-

nunciations, special circumstances which render the work particularly inopportune at the time, etc. (Index Librorum prohibitorum, 1922, Præfatio, xii.)

2°. Pius IV published in 1559 the first catalogue or Index of books condemned by special decree of the Holy See; his successors revised it from time to time, adding new works proscribed by subsequent decrees, removing some from the list as, through the change of conditions, offering no serious danger any longer. The most important revision in modern times was made under Leo XIII (1900). In 1922 Pope XI published a seventh edition of it with the necessary additions and only a few other slight modifications.

3°. As we learn from the preface to the edition of 1917 and of 1922, prohibitions extend to all the editions and translations of the work; condemnation of the first volume of a work or of some issues of a periodical or of all the works of an author does not imply condemnation of the subsequent volumes, issues or works but it keeps them under suspicion till the author has shown signs of amendment; the condemnation of all the works of an author does not affect those of his works which do not treat of religion and fall under no general or other particular decree. (Præfatio, p. xiii; Vermeersch, n. 734.)

V. EXEMPTIONS AND DISPENSATIONS FROM THE LAW. (Can. 1400–1403.)

The general laws or particular decrees forbidding the reading of certain books have the same binding effect as other ecclesiastical legislation and

as based on the presumption of common danger they bind even those for whom the danger might not exist. They admit also of exemptions and dispensations.

247. 1. *Exemptions.* (Can. 1400–1401.) (*a*) The Code itself authorizes all persons engaged in biblical or theological studies in whatever capacity, as professional theologians, teachers, Scripture scholars, students in seminaries or universities, priests continuing their college work after ordination, to use editions of the original text or of the ancient Catholic versions of the Bible published by non-Catholics (Can. 1399, 1) and translations of the Scripture into the vernacular printed without the required permission of the Holy See or of the Bishop (Can. 1391) provided these editions possess the necessary qualities of fidelity and integrity and do not contain either in the introductions or notes any attacks against the dogmas of the Catholic faith.

(*b*) Cardinals, Bishops both residential and titular, and other Ordinaries enjoy total exemption from these positive laws and decrees but there remains for them the obligation of the natural law to avoid occasions of sin and hence to take proper precautions in the use of dangerous publications.

248. 2. *Dispensations.* (Can. 1402–1403.) (*a*) The Supreme Pontiff can give permission to read forbidden books and usually does so through the Holy Office and the Propaganda or Congregation of Oriental Churches for their subjects. The petition should state the reason for the request and the position or occupation of the petitioner. For a cleric or religious it should have besides a

recommendation from his own Ordinary and for a lay person one from his confessor.

Permissions granted by the Holy See do not concern books condemned by the Ordinary unless the Indult embraces all books by whomsoever proscribed.

(*b*) By common law Ordinaries can give permission to read books condemned by themselves and also permission to read those condemned by the Holy See but this one only to their subjects, in particular cases and for urgent reasons.

They may obtain from the Holy See more extensive faculties so that they can give general permissions to their subjects but they should give these with discretion and only for just and reasonable causes, using discrimination as regards the persons to whom and the books for which they grant them. In the United States, because of the spread of non-Catholic literature and the necessity of constant dealing with non-Catholics Bishops usually have ample faculties and give general permission to all priests with only a few restrictions.

All who enjoy the above exemptions or dispensations are under grave obligation of taking care that forbidden books used or kept by them do not fall into the hands of other persons.

These concessions partake of the nature of personal privileges admitting of favorable interpretation and holding in all places. They extend to pamphlets, periodicals, newspapers, images, etc.

Canonists permit the use of *epikeia* in these matters and excuse from the law when a serious reason of necessity or utility exists (Cocchi, n. 69;

Noldin, n. 711) always with due regard to the obligation of the natural law.

VI. BOOKSELLERS. (Can. 1404.)

249. Booksellers should not keep, sell, or loan books which treat *ex professo* of obscene things.

As to other forbidden books they should not offer them for sale except with permission from the Apostolic See, neither should they sell them to any person whom they may not reasonably presume authorized to buy them. They do not have, however, to inquire from every customer whether he has the necessary permission. They may form a prudent opinion from the nature of the book and the character of the buyer.

VII. GENERAL OBLIGATION OF AVOIDING DANGEROUS READING (Can. 1405.)

The Code reminds all those who have permission to read forbidden books of the remaining prohibition of the natural law against reading any book which would constitute for them a proximate occasion of sin.

It urges Ordinaries and all in charge of souls at proper times and on favorable occasions to warn the faithful against the danger connected with, and the injury caused by, the reading of bad, particularly forbidden, books.

TITLE XXIV

PROFESSION OF FAITH

(Can. 1406–1408.)

(Ponsius, De Antiquo usu formularum Fidei, Migne, Cursus Completus, vi, p. 419; Wernz, iii, n. 17; Blat, n. 296; Vermeersch, n. 739; Cocchi, n. 74; Turner, History and use of Creeds, London, 1906.)

I. ANCIENT DISCIPLINE.

250. Our Lord expects us to confess Him before men (Mat., x, 32) and the Church prescribes on certain occasions a solemn profession of faith, in a determined form, often confirmed with an oath, particularly since the seventh century. (Toledo, 675, Can. 10.) This public manifestation of our faith honors God, strengthens our convictions and resolutions, edifies the faithful, and serves at times to detect false brethren. Hence the long existing practice in the Church of demanding it of those who asked for admission into the fold and of such as occupied in it a position of special responsibility. From the beginning, before the reception of baptism catechumens had to express their faith in the words of the Creed which contained a summary of the principal Christian dogmas. They repeated it three times, says an an-

cient writer, in presence of witnesses, with hands and eyes lifted up to heaven and in some places at least they subscribed it with their own hand if able to do so in the books of registers of the Church.

In the Councils Bishops recited and subscribed the symbols or professions of faith of previous synods. (Chalcedon, 451; Toledo, 785.) Heretics on returning to the Church had to abjure their errors and affirm their firm adhesion to the true doctrines; candidates to orders and Bishops before their consecration gave an account of their belief (Toledo, 675, Can. 10; 2, D, 23); the Roman Pontiffs themselves before their coronation confessed their faith publicly and often sent a written profession of faith to other Bishops in so called synodical letters.

The Apostles' Creed represents the most ancient form of those professions of faith. As heresies arose others more complete or more explicit on the disputed points came also into use. To Arianism was opposed the Nicene symbol (325), to Macedonianism, the Symbol of Constantinople (381); to other errors, the symbols of Athanasius, of Toledo (675), of St. Leo IX, of Innocent III (1210), of the IV Lateran Council (1215), of the Council of Vienna (1311).

In the sixteenth century "the calamitousness of the times and the malignity of advancing heresies" compelled the Council of Trent to adopt further measures for the protection of the Catholic faith and to establish more frequent and more effective tests of orthodoxy. (Sess. xxv, 2, de Ref.) Pope Pius IV completing its legislation defined

with greater precision the occasions on which the profession of faith would henceforth be obligatory and published a new form of profession corresponding to the then prevailing errors. (Const. In Sacrosancta; Injunctum Nobis, Nov. 13, 1564.)

The Symbol of Trent or as more commonly called the *Piana Professio* has remained to this day, with an addition made by Pius IX (Jan. 20, 1877) to include the definitions of the Vatican Council (1870), the form ordinarily used in the Latin Church. The Greek Church has her own symbols approved by Gregory XIII, Urban VIII, Benedict XIV, and the Holy Office (1890).

More recently, at the time of the modernistic movement, Pius X prescribed a profession of faith known also as the Antimodernist Oath, containing a solemn and most explicit affirmation of the truths opposed to the tenets of the new false teachers. (Sacrorum Antistitum, Sept. 1, 1910; Cons. Cong., Sept. 25; Oct. 25; Dec. 17, 1910; Nouvelle Revue Théologique, 1910, p. 690, 793, 794.)

II. PRESENT DISCIPLINE. (Can. 1406.)

251. 1. *Profession of Faith.* 1°. *Persons concerned.* Under the present law which modifies the Tridentine legislation only in a few details the obligation of the canonical profession of faith exists for the following persons:

(*a*) Members of a General or Particular Council or of a diocesan synod, whether they have a decisive or only a consultive vote. These

make the profession of faith before the president of the assembly or his delegate and the president before the council or synod;

(*b*) Newly created Cardinals must make their profession of faith before the Dean of the Sacred College, the first Cardinal priest, and the first Cardinal deacon, and the Chamberlain of the Holy Roman Church;

(*c*) Newly promoted Bishops, residential or titular, Abbots or Prelates *nullius,* Vicars and Prefects Apostolic must make it before the delegate of the Holy See;

(*d*) The Vicar Capitular before the cathedral chapter or the consultors;

(*e*) Those promoted to a dignity or to membership in a chapter, before the local Ordinary or his delegate and the chapter;

(*f*) Newly appointed consultors, before the local Ordinary and the other diocesan consultors;

(*g*) The Vicar General, pastors, and all priests appointed to a benefice having the care of souls attached to it, even though not a permanent, but merely manual benefice, the rector and professors of Theology, Canon Law, and Philosophy in seminaries, at the beginning of each scholastic year or at least when they assume office; clerics about to receive subdeaconship, diocesan censors of books, preachers or confessors before they receive faculties to exercise these functions; all these ecclesiastics must make the profession of faith before the local Ordinary or his delegate;

(*h*) The rector of a university or faculty must make it before the Ordinary or his delegate; all the professors in a canonically erected university

or faculty, at the beginning of each scholastic year or at least on their assuming office, and students who after a successful examination are to receive academic degrees must make the profession of faith before the rector of the university or faculty or his delegate;

(*i*) Superiors in clerical religious orders must make their profession before the chapter or the superior who appointed them or their delegates.

In all the cases just mentioned those who relinquish an office, benefice or dignity to assume another even of the same kind must renew their profession of faith, for example, a priest appointed to another parish in the same diocese. Preachers or confessors who have their faculties renewed every year do not need repeating their profession of faith.

252. 2°. *Form of Profession.* (a) In the ceremony of ordination priests make a profession of faith in the words of the Apostles' Creed; in the consecration of a Bishop the symbol still used is that of St. Leo IX. Under the ancient law the profession of faith commanded by the Council of Trent had to be made according to the formula drawn up by Pius IV. The present law demands a profession of faith according to the form approved by the Holy See, which no doubt means the *Professio Piana* inserted in the Code and thus formally approved.

(*b*) Our law does not admit even the validity of a profession of faith made by proxy or in the hands of a layman. It does not require any written or signed document.

When several persons make the profession of faith together one of them may read the formula

the others repeating after him or one may read it and the others give their assent to it at the end in a few words, taking the oath individually with at least one hand on the Gospel.

253. 3°. *Contrary Customs.* (Can. 1408.) All customs contrary to the canons of this Title are formally reprobated and, therefore, abrogated should they have existed for over one hundred years and from time immemorial.

4°. *Sanctions.* (Can. 2403.) Those who, without legitimate excuse, neglect to make the profession of faith prescribed by law should receive a canonical warning with reasonable time to comply with their obligation. If they persevere in their disobedience they should be punished even by privation of their office, benefice, dignity, or charge. Meanwhile they have no right to the income and should make restitution had they taken any part of it.

254. 2. *Antimodernist Oath.* 1°. By the *Motu Proprio Sacrorum Antistitum,* Sept. 1, 1910, the following persons, after making the profession of faith according to the form of Pius IV, must take the oath against modernism, sign it and hand it to their Ordinary:

(*a*) Clerics before promotion to subdeaconship; each one should receive a copy of the profession and oath that he may read it carefully and know the consequences of a violation of the promises made;

(*b*) Confessors and preachers before they obtain faculties;

(*c*) Parish priests, canons, beneficiaries before taking possession;

(*d*) Officials in episcopal courts and ecclesias-

tical tribunals, not excepting the Vicar General nor the judges;

(*e*) Special preachers for the Lenten season;

(*f*) All officials in the Roman Congregations or Tribunals should take the oath before the Cardinal prefect or secretary of the respective Congregation or Tribunal;

(*g*) Superiors of religious orders or congregations and teachers before entering on their functions. The Consistorial Congregation declared that teachers in seminaries should renew the oath at the opening of each scholastic year (Sept. 25, 1910); some canonists have ventured the opinion that at present it might suffice for them to take it when they assume the office as the Code prescribes for the profession of faith.

A copy of the profession and oath should be kept in the diocesan or Roman archives and violations reported to the Holy Office.

2°. As the Code contains no mention of the antimodernist oath some concluded that its obligation had ceased but the Holy Office (March 22, 1918) declared that it continued till the Holy See would decide otherwise. The measures against modernism intended to meet special conditions had a temporary character and could find no place in the Code of laws permanent of their nature.

PART V

BENEFICES AND OTHER NON-COLLEGIATE ECCLESIASTICAL INSTITUTES

(Can. 1409–1494.)

In this fifth part of the Third Book the Code treats of sacred things which are neither entirely spiritual like the sacraments, divine worship, or preaching, nor altogether material like ecclesiastical property but mixed and consisting of two elements one spiritual, the other material. It contains two Titles, the first treating of benefices in six distinct chapters and eighty canons, the second of non-corporate ecclesiastical institutions in six canons.

TITLE XXV

ECCLESIASTICAL BENEFICES

(Can. 1409–1488.)

(Leurenius, Forum Beneficiale; Thomassin, P. ii, L. 1, c. 15, 33; L. iii, c. 1; Wernz-Vidal, Jus Canonicum, ii, n. 139; Catholic Encyclopædia, Benefice; Lesne Les diverses acceptions du terme Beneficium du VIII^e^ au XI^e^ siècle, 1924; Vermeersch, n. 741; Cocchi, n. 79; Blat, n. 302; Ferreres, n. 408.)

I. PRELIMINARY NOTIONS. (Can. 1409–1413.)

255. 1. *Origin.* In the beginning the clergy were supported by the contributions of the faithful which the Bishops administered and distributed according to needs. A modification in the manner of allotment appears in the fifth century chiefly in Italy: the Bishop divides the revenues into three or four portions, one serving for his own support, another for the maintenance of the clergy, the others for the construction or repair of the church and the relief of the poor. Even now the oblations received in the different churches of the diocese went to swell the common fund.

With the growth of the Church, the increase of contributions made in kind, the multiplication of country parishes and the acquisition of real property this system offered in practice serious difficulties. Hence beginning with the sixth century examples occur of ecclesiastics allowed to retain for themselves and for their church gifts received by them and also the income from the property which the church possessed. The ownership remained with the Bishop who at the death of the usufructuary could dispose again of the fruits as he chose. Jurists called these grants *precariæ* from their temporary and precarious character or according to others because they were made in answer to *requests, preces.* (Lesne, Histoire de la propriété ecclésiastique, i, p. 314.) They implied a departure from ancient discipline which some contemporaries deplore as a sign of decay but circumstances made them necessary as particular Councils and the Popes themselves recognized. (Agde, 506, Can. 59; Orléans 511,

Can. 16, 17; Toledo, 527, Can. 4; Pope Symmachus, 513; 61, C. xvi, q. 1; 24, 25, C. xxiii, q. 8.)

Naturally successive incumbents of certain offices would enjoy by repeated concessions the fruits of the same land or other ecclesiastical property and thus property and office became connected with one another so that by custom if not by law, appointment to the latter carried with it a right to the income from the former. When the connection had reached a sufficient degree of firmness and legal value this gave rise to a new institution called benefice a name which in civil matters serves to designate the grants of land made by princes to their subjects who had rendered them eminent services. (Ducange, Glossarium, Beneficium.)

This change took place slowly, beginning in the sixth century and not reaching its full development till the ninth or even the eleventh in city parishes and capitular churches. The principle of feudal tenure then in vogue thus became extended to ecclesiastical possessions, only without right of hereditary transmission. Henceforth clerics depended for their support chiefly on the fruit of property connected with their office. Many of these endowments have been lost in the course of time, by confiscation or otherwise but some remain to this day. As a partial compensation for unjust spoliations governments in some countries pay to the clergy stipends which take the place of the former beneficiary revenue and serve as a canonical equivalent.

256. In the United States the clergy and churches have now for a long time depended for their sup-

port almost exclusively on contributions from the people and only in a few rare cases on anything like permanent endowments, which seemed an essential element of the ancient benefice. Moreover, there were no chapters nor canonically erected parishes before the publication of the Code. Hence the declaration of the First Provincial Council of Baltimore (1829, 1) repeated by the Second Plenary Council (1866, n. 108) that there are in the country no beneficial parishes except one in the city of New Orleans. From a decree of the First Provincial Council of San Francisco (1874, XVI) some concluded that a few such parishes existed in California but this was not the opinion of Archbishop Alemany who presided over the Council nor of his later Vicar General who assisted at it.

After the creation of permanent rectorships by the Third Plenary Council of Baltimore some canonists expressed the opinion that these at least had all the requisities of a benefice. They too, however, lacked canonical erection. With the publication of the Code conditions changed. All the former quasi-parishes with few exceptions became parishes in the full canonical sense and as the new law accepted free but reliable contributions as equivalent to endowment, parishes in the United States possessed now all requirements for benefices. In fact to a question proposed by the Apostolic Delegate to the Commission for the interpretation of the Code the President replied that a parish was always a benefice whether it had an endowment proper or sufficient support from other sources such as reliable offerings, stole fees, etc. From this the Delegate concluded that

parishes in the United States having fixed boundaries, resident pastors and the necessary resources constituted benefices in the strict canonical sense. (Nov. 10, 1922; Constitution of the Church, n. 6.)

257. 2. *Nature and Conditions.* (Can. 1409, 1410.) In a benefice we find two things, a spiritual and a temporal one, a sacred function and right to support. When opposed to office as in the axiom *beneficium pro officio,* benefice designates directly the temporal element and office the spiritual one; likewise when we speak of the fruits of a benefice.

The Code includes the two elements in the definition of a benefice as: a juridical entity erected in perpetuity by competent ecclesiastical authority and consisting of a sacred office and the right of receiving the portion of the revenues from the endowment attached to the office. Four conditions, then, are required for a benefice:

(*a*) Erection by competent ecclesiastical authority. Private persons can, for example, found Masses, the civil power can build a chapel and endow it; this will not suffice to establish a benefice without intervention of ecclesiastical superiors to accept the foundation or endowment and attach to it a sacred office;

(*b*) Perpetuity of the juridical being, that is, objective perpetuity. The present law does not demand subjective perpetuity or permanency for the incumbent. Parishes with removable pastors fulfil the condition as long as they are established themselves in a permanent manner. Neither does this perpetuity necessarily imply continuity. The office of Vicar Capitular possesses perpetuity

because established permanently in the Church but not continuity as it supposes conditions of their nature temporary;

(*c*) A sacred office, that is, some function implying participation of ecclesiastical power of order, jurisdiction or administration governed by Church law and reserved to clerics. The office of sacristan, organist, sexton, is not a sacred office in this sense (Can. 145; General Legislation, n. 309);

(*d*) An endowment and the right for the incumbent of the sacred office to the portion thereof or of its fruits, annexed to the office. Formerly endowment consisted generally of land or other real estate. The present law accepts as endowment not only property belonging to the juridical being, benefice, or other moral person, but also definite contributions due by a family or moral person, whatever the origin of the obligation, reliable although voluntary offerings of the faithful which accrue to the rector of the benefice such as collections, subscriptions if they belong to him; also stole fees as fixed by diocesan taxation or legitimate custom and thus made in a measure obligatory, but not extra offerings made spontaneously by the faithful on the occasion, for example, of a baptism, nor ordinary Mass stipends because of their special personal character; likewise choir distributions in chapters excepting a third part of the same if the whole income of the benefice consists of choir distributions.

258. 3. *Different Kinds of Benefices and Similar Institutes.* (Can. 1411–1413.)

1°. The Code divides benefices into:

(*a*) Consistorial or non-consistorial according

as they are usually conferred in Consistory or not; to the first category belong bishoprics, to the second, parishes; the following canons pertain to non-consistorial benefices except for some indication to the contrary;

(*b*) Secular or religious according as they belong exclusively to secular or to religious clerics; all benefices established outside of churches or houses of religious are presumed by law to belong to seculars except for some proof that they belong to religious;

(*c*) Double or residential and simple or non-residential according as they require or not habitual residence beside service;

(*d*) Manual, temporary, or removable and perpetual or irremovable according as the incumbent enjoys permanency or is removable at will;

(*e*) *Curata* or *non-curata* according as they involve the cure of souls or not.

2°. The following institutes although similar to benefices do not possess all the elements thereof and, therefore, do not deserve that title:

(*a*) Parish curacies not erected permanently;

(*b*) Lay chaplaincies, founded, administered, and controlled by lay persons, not erected or governed by ecclesiastical authority as if a lay person built a chapel and endowed it then obtained from the Bishop a priest to say Mass therein, supporting him but retaining the administration of the chapel and the right to remove the chaplain at will;

(*c*) Coadjutorships with or without future succession; they lack objective perpetuity;

(*d*) Personal pensions; they too lack objective perpetuity;

(*e*) Temporary *commendas,* that is, concessions of revenues from a church or monastery made to a person with the understanding that when he loses his claims the revenues revert to the church or monastery, as in the case of an ecclesiastic appointed administrator of a vacant parish and given a portion of its revenues while in charge of it.

CHAPTER I

ERECTION OF BENEFICES

(Can. 1414–1418.)

259. 1. *Authority Required.* Ecclesiastical superiors have full and exclusive right to establish new ecclesiastical benefices in the church.

(*a*) The Pope alone has authority to erect consistorial benefices such as dioceses and also new dignities in chapters (Can. 394 § 2); he may erect non-consistorial benefices in any part of the Church although he rarely exercises that power;

(*b*) Local Ordinaries can in their respective territories erect non-consistorial benefices, with the exception of dignities in chapters which are reserved to the Holy See. Ordinary here does not include Vicars General who do not possess this power except by special mandate;

(*c*) A Cardinal can erect in his own title or *Diaconia* benefices which do not entail the cure of souls unless the church belongs to exempt clerical religious.

2. *Conditions.* (Can. 1415–1417.) 1°. Besides a just cause the erection of a new benefice requires a stable endowment yielding sufficient fruit for the perpetual maintenance of the benefice and the fair support of the ministers. What will

suffice for this depends on times and places, the Code does not attempt to determine even approximately; the Council of Trent demanded an income of one thousand *scutata* for an episcopal and one hundred for a parochial benefice but conditions have changed since.

The present law, however, allows the erection of parishes or quasi-parishes without endowment in the form of a capital as long as the needed support is morally certain to come from some other source, voluntary offerings, stole fees, diocesan assistance, etc.

When the endowment consists in a sum of money the Ordinary after consulting the diocesan board of administration (Can. 1520) should invest it as soon as possible in safe and fruitful real estate or bonds.

260. 2°. Before the erection the superior should call and hear all persons who may have an interest in the matter, such as parishioners, the pastor of the place, representatives of other institutes which the new one may affect. This canon has no invalidating clause and does not exact this formality for the validity of the act.

3°. The founder of a benefice or the one who endows it may, with the permission of the Ordinary, in the charter of foundation lay down certain conditions not included in the common law and even contrary to it provided they contain nothing unreasonable, unbecoming, subversive of ecclesiastical discipline or repugnant to the nature of the benefice. He may thus reserve the benefice to the members of a certain family if they possess the necessary qualifications, exact certain academic degrees, etc.

Once accepted these conditions must be fulfilled and the Ordinary could not dispense from them or change them even with the consent of the founder or of his heirs except, however, in case the change would be favorable to the Church.

3. *Form.* (Can. 1418.) An erection of benefice should be made by a legal document indicating the exact location of the benefice, describing the endowment and specifying the rights and obligations of the beneficiary. Nothing, however, proves that this pertains to the validity of the act.

CHAPTER II

UNION, TRANSFER, DIVISION, DISMEMBERMENT, CONVERSION AND SUPPRESSION OF BENEFICES

(Can. 1419–1430.)

1. UNION OF BENEFICES.

261. 1. *Nature and Species.* (Can. 1419, 1420.) 1°. Union may result in real or personal unity, that is, by union two or more benefices may come to form only one or simply to be placed permanently under one and the same titular.

2°. Like ancient canonists the Code distinguishes three principal forms of union, extinctive, equally principal and less principal.

(*a*) In extinctive union out of two or more suppressed benefices a new one arises or one or several benefices become merged into another and lose their juridical existence. In these cases the new or remaining benefice assumes the obligations and inherits the rights of the extinguished ones. Should these rights or obligations conflict the better or more favorable ones alone are retained.

The Council of Trent permitted the union to seminaries of simple benefices, for example, chaplaincies. This might imply that these ceased to

exist, the revenues passing to the seminary which assumed the obligations connected with them, for instance, of having a certain number of Masses celebrated every year for a specified intention. (Cf. Can. 1355, 3°.)

If an exempt becomes united to a non-exempt benefice, the new one arising from the union or the remaining one enjoys exemption.

262. (*b*) After an equally principal union, two or more benefices thus united retain their juridical entity, with their distinct rights and obligations but henceforth they can have but one and the same titular; none becomes subordinate to the other, objectively they remain distinct and one only in titular.

In Italy and other countries we have examples of Bishops now ruling over a territory which in times past formed several dioceses. For similar reasons shifting of the population, decrease in resources, etc., two parishes may also be placed under one pastor permanently, the boundaries and revenues remaining distinct.

(*c*) By the union called less principal or union by subjection or accession the united benefices do not lose their identity but one of them becomes principal and the other or others accessory. The accessory ones follow the principal and the cleric who obtains the latter obtains also the former and he must fulfil the obligations of all. If two parishes are united in this manner the pastor of the principal one becomes the pastor of both and he must hold services in both either personally or through an assistant whom he compensates out of the revenues of the parish. In case the rights or privileges of the united benefices would conflict

those of the principal one would prevail, not necessarily the better or more favorable ones as in extinctive union.

The Consistorial Congregation had in view some such union when, determining the canonical status of parishes in the Untied States after the publication of the Code, it decided that some quasi-parishes or missions might have such a small or fluctuating population and resources so limited that it would not be advisable to raise them to the rank of canonical parishes; for the present they should remain attached to some other parish and their church serve as a subsidiary church until they can become parishes in their turn. (Aug. 1, 1919.)

263. 3. (*d*) Formerly parishes would often become united in a less principal manner to colleges or other institutes like chapters or monasteries. Such unions called also incorporations could be made *pleno jure* or *non pleno jure,* complete or incomplete. In the first case it extended to both the temporal and spiritual rights or duties; in the second, only to the temporal rights, the spiritual care of the parish remaining in the hands of a pastor whom the college had to support.

The present law rules likewise that if the Holy See, alone competent in this matter, unites a parish with a religious house, *non pleno jure,* that is, as to temporalities only, the religious house acquires a right to the revenues of the parish but not to its spiritual administration. The religious must present to the local Ordinary a member of the diocesan clergy whom he will appoint pastor and who will receive his support from the religious house.

If the union or incorporation is made *pleno jure* as to the temporalities and also the spiritual care, the parish becomes religious. The superior may designate one of his subjects to act as pastor but the local Ordinary has the right to examine the candidate and pass on his fitness; he gives the canonical institution and the appointee, although a religious, remains subject to the Bishop's jurisdiction, coercive power and visitation in all that pertains to the cure of souls. (Can. 1425.)

264. 2. *Authority Required for the Union of Benefices.* 1°. The Holy See reserves to itself as grave matter all extinctive unions of benefices and equally or less principal unions of secular with religious benefices or vice versa because these involve a departure from the principle of common law that secular benefices belong to seculars and religious to regulars.

2°. Local Ordinaries, not including, however, Vicars Capitular or Vicars General without special mandate; (*a*) may for reasons of necessity or great and evident utility of the church effect an equally principal or less principal union of parish churches among themselves or with benefices which do not involve the care of souls. In the latter case the parish should never become accessory to the non-curate benefice and the union should not be of a secular with a religious parish; the spiritual obligations must always remain intact.

A Bishop might find a sufficient reason for uniting two parishes in the lack of necessary resources or decrease in the population.

(*b*) Local Ordinaries may likewise unite a parish with a cathedral or collegiate church

located within the boundaries of the parish, so that the revenues of the latter go to that church, excepting the portion needed for the decent maintenance of the pastor or parochial vicar.

(*c*) They may not unite a parish with the *mensa* of a chapter or of the Bishop, that is, with the temporalities or ecclesiastical patrimony belonging to the Bishop or chapter, nor with monasteries, with the churches of religious or other moral persons nor with dignities or benefices of cathedral or collegiate churches. Such unions would too readily turn to the detriment of parishes and of souls.

(*d*) They may not unite benefices in a temporary but only in a permanent manner. Temporary unions might serve to evade the law against plurality of benefices. (Can. 1423.)

(*e*) They may not unite benefices with or without the care of souls against the will of the actual incumbents if this causes them some detriment, nor benefices subject to the right of patronage with benefices of free appointment without the patron's consent even though a layman; nor benefices of one diocese with those of another even should the dioceses be united in an equally principal manner and ruled by the same Bishop; nor exempt benefices or those reserved to the Holy See with others. These unions might involve alienation or lead to confusion of rights and cause misunderstandings. (Can. 1424.)

II. TRANSFER OF BENEFICES. (Can. 1421, 1422, 1426.)

265. 1. Transfer of benefice means removal of the seat from one place to another. For a parish

it would mean a change in the location of the church and parochial residence; for a chaplaincy it might consist in substituting a chapel or altar to another in the same church.

2. Transfer supposes the same power as erection; hence the Supreme Pontiff alone can transfer episcopal sees and to him also the common law reserves all transfers of religious benefices.

Local Ordinaries can not, then, change the title of cathedral from one church to another but they have authority to transfer secular parishes and all simple benefices which do not belong to religious.

This requires the usual formalities and just cause, *viz.* necessity or great and evident utility of the church.

For the transfer of a parish this cause exists when the church has become unfit for sacred use and funds for repairing it are wanting. The Ordinary may then transfer its revenues and obligations with the title of the parish to another church within the same territory. Seriously inconvenient location of the church for the service of the parish would likewise warrant a change.

The church thus abandoned may be destroyed or desecrated and sold for profane, not unbecoming purposes (Can. 1187) or turned into a public chapel or, particularly in the case of a cathedral into an ordinary parish church.

Other benefices can be transferred by the Ordinary only when the church in which they were founded has collapsed without hope of restoration. He must then transfer them with all their revenues and burdens to the mother church or to

another church of the same or nearby place and if possible erect in that church altars or chapels under the titles which they had in the original benefices. This applies, for example, to chaplaincies attached to a certain altar or chapel in a particular church. (Can. 1426.)

III. DISMEMBERMENT OF BENEFICES.

(Can. 1421, 1422, 1427.)

266. 1. Dismemberment as distinct from division consists in taking a portion of the territory or of the endowment of a benefice, not to form a new one but to give it to another already in existence or to a pious cause or an ecclesiastical institute.

All dismemberments of benefices are reserved to the Holy See except those of parishes which follow the same rules as divisions.

IV. DIVISION OF BENEFICES PARTICULARLY OF PARISHES. (Can. 1421, 1422; 1427.)

There is division when out of one benefice two or more are made.

267. 1. The Holy See alone can divide benefices like dioceses which it has the exclusive right to erect and it reserves to itself all divisions of benefices belonging to religious with the sole exception of parishes.

2. Local Ordinaries, which as said before does not include Vicars Capitular nor Vicars General without special mandate, have authority, for a just and canonical cause, to divide all simple benefices not belonging to religious and all parishes even those which belong to religious as

Leo XIII explicitly declared in the Const. *Romanos Pontifices* (May, 1881, viii), and the Code clearly implies.

(*a*) They may proceed to the division of a parish against the will of the rector, not however without consulting him (Can. 1428), and without the consent of the people; and they may thus either form a new parish or establish a perpetual vicariate by committing part of the divided territory to a cathedral or collegiate church which will administer it through a perpetual vicar, or erect a subsidiary church with a rector more or less independent. (Vermeersch, n. 757; Periodica pro Religiosis et Missionariis, 1925, p. 12–17.) They may also under the same circumstances dismember the parish and assign part of it to another church.

268. (*b*) The Code recognizes as sole canonical causes for the division of parishes great difficulty for the people to go to the parish church, and large number of parishioners making it impossible for one pastor to attend properly to their spiritual needs even with the help of assistants.

The difficulty does not have to be very great nor perhaps objectively and in itself really great as long as it proves so subjectively and does in practice prevent a notable number of the faithful from going to the parish church for Mass and the sacraments.

The too large number of parishioners constitutes of itself a sufficient cause for division. In the Const. *Aliquantulum* Pius VI intimated, without making it a strict rule, that a parish should not have more than six thousand souls. (March 10, 1791.)

Formerly when benefice meant a permanent endowment yielding a steady revenue intended directly for the benefit of the incumbent, division appeared easily as an undue interference of the Ordinary in the rights or privileges of the lower clergy and as an odious measure contrary to the wishes of the founders and to be resorted to only in cases of real necessity. But parishes although real benefices present a special character and have as their main purpose the salvation of souls. Moreover, the parochial endowment has undergone important changes in modern times. Hence the special powers given to Bishops by the Council of Trent for the division of parishes (Sess. xxi, c. iv, de Ref.) and the tendency of ecclesiastical jurisprudence manifested in numerous decisions of Roman Congregations to facilitate those divisions particularly in growing dioceses, and to approve of them whenever they favor spiritual progress as long as new parishes do not lack sufficient support. (A. S. S., vol. xiii, p. 307; Wernz-Vidal, n. 163; Bouix, De Parocho, p. 253.)

269. (*c*) The Ordinary must provide for the proper endowment or support of new parishes or perpetual vicariates. If the old parish possessed property intended for the benefit of the entire territory the new one should receive a portion of it as it should take its share also of the debts contracted for the whole territory. The Ordinary makes this distribution according to the principles of equity, with fair, if not mathematical, proportion, taking into account the relative importance of the two parishes, their burdens and resources, with due regard to the will of the founders and

acquired rights which might not permit the division of certain assets. (Can. 1500.)

Usually the new parish will depend for its endowment and support on the offerings of the people; if these did not suffice and in the absence of any other resources the Ordinary might assign to it a share in the revenues of the old parish (Can. 1427, § 3) always leaving to the latter a sufficient income.

(*d*) When a new parish thus receives regular assistance from the mother church it must acknowledge that indebtedness by some marks of dependence left to the determination of the Ordinary. He may not, however, as done sometimes formerly, reserve to the mother church the right of the baptismal font. (Can. 1427 § 4.)

(*e*) Parishes or vicariates formed by the division of parishes belonging to religious or subject to the right of patronage are not religious but secular and of free appointment.

V. FORMALITIES AND MODES OF PROCEDURE.

(Can. 1428.)

270. 1. Before proceeding to the union, transfer, division, or dismemberment of a benefice the Ordinary should take the advice of his chapter or diocesan consultors, without having to follow it; he should also give an opportunity to all interested persons particularly to the rector, of presenting their observations and expressing their views on the question, then he must have the act recorded in an authentic document. Omission of these formalities would not, however, affect its validity.

2. Lack of canonical cause for it would render it null but, as said before, the law allows greater freedom in dealing with parochial than with other benefices.

3. Against a decree of union, transfer, dismemberment, or division of a benefice by the Ordinary the law does not admit appeal proper but simply recourse to the Holy See *in devolutivo* without suspending effect.

VI. PENSIONS ON BENEFICES. (Can. 1429.)

271. 1. Local Ordinaries can not impose on any kind of benefices perpetual pensions, nor temporary pensions to last for the lifetime of the pensionary; they may when conferring a benefice, for a just cause to be expressed in the very act of bestowal, impose on the benefice a temporary pension to last for the life of the one who receives the benefice provided there remains enough for his decent sustenance.

2. On parochial benefices, however, local Ordinaries can not impose any pensions except in favor of a pastor of the parish or assistant who goes out of office. The amount of these pensions must not exceed one third of the revenue of the parish after deduction of all uncertain income and current expenses such as upkeep of the church, pastor's salary, etc. Some ancient canonists denied the right of Bishops to impose such pensions on benefices. (Reiffenstuel, Lib. iii, tit. 12, n. 89.)

3. Pensions imposed on benefices either by the Roman Pontiff or by others cease with the death of the pensionary who can not alienate them unless expressly empowered to do so.

VII. CONVERSION AND SUPPRESSION OF BENEFICES.

(Can. 1421, 1422, 1430.)

272. 1. A benefice is converted or transformed when it is changed into one of a different kind canonically, for example, a benefice involving the cure of souls into one which does not. It is suppressed when entirely extinguished.

2. Local Ordinaries can obviously not transform or suppress benefices which they have no authority to erect, for instance, dioceses. But even in regard to those over which in other respects they have real authority their power of conversion or suppression is very much limited as once established benefices enjoy the support of the common law.

(*a*) The suppression of any kind of benefice is reserved to the Holy See. (Can. 1422; Wernz-Vidal, n. 177.)

(*b*) The Council of Trent forbade Bishops to change curate, into simple, benefices (Sess. xxv, c. 16, de Ref.) and likewise the Code refuses to them the right to change a benefice involving the cure of souls into one which would not, or religious into secular and secular into religious benefices.

They may convert simple, into curate, benefices unless the founder had placed some obstacle to the change (Can. 1430); they may also transform removable into irremovable parishes but not vice versa. (Can. 454.)

CHAPTER III

CONFERRING OF BENEFICES

(Can. 1431–1447.)

(Thomassin, l. c. P. ii, L. 1, c. 33–55; Lux, Constitutionum Apostolicarum de generali Beneficiorum Reservatione collectio et interpretatio, Breslau, 1904; E. Roland, Les Chanoines et les Elections Episcopales du XI^e^ au XIV^e^ siècle, Aurillac, 1909; G. Mollat, La collation des Bénéfices Ecclésiastiques sous les Papes d'Avignon, Paris, 1921.)

The rules given in the Second Book of the Code (Can. 147–182) concerning appointments to Offices apply also to collations of the benefices connected with offices. We may, then, distinguish four ways of obtaining benefices, free appointment, election, postulation, and presentation. Here the Code treats only of free appointment and presentation; it defines who may appoint to benefices (Can. 1431–1435), who may be appointed (Can. 1436, 1437, 1442), the mode of appointment (Can. 1438–1441), the manner of taking possession. (Can. 1443–1447.)

This legislation refers almost exclusively to lower benefices; the election of the Pope and the appointment of Bishops form the object of special provisions. (Can. 160, 329.)

I. WHO APPOINTS TO BENEFICES. (Can. 1431–1435.)

273. 1. *The Pope.* 1°. The Sovereign Pontiff by virtue of his primacy of jurisdiction has ordinary, direct, and immediate authority over each and every particular church and can, therefore, confer all ecclesiastical benefices or reserve them to himself. (Lateran, 1215, Can. 5; Letter of Clement VI to the King of England, 1344; Mollat, p. 188; Roland, p. 119.)

2°. As guardians of ecclesiastical discipline Popes from the beginning had occasionally to exercise this power to supply the negligence of prelates, correct irregularities in appointments and settle controversies. In the twelfth and following centuries, owing to new conditions in the Church and society their interventions became much more frequent not only in cases of devolution or appeal but also under the form of expectative graces, mandates of provision or reservations.

(*a*) The first example we have of expectative graces is the concession made by Innocent II in 1131 to the regular canons of Chateaudun of the secular prebends of St. Magloire as soon as vacancies would occur. The Pope disposed in the same manner of the prebends of the cathedral of Grenoble in 1135.

Adrian IV and Alexander III asked Ordinaries likewise on several occasions to confer the first vacant benefice on a certain cleric.

Bishops, too, soon commenced to grant expectative letters but the Lateran Council (1179, 2, X, III, 8) and later on again Boniface VIII strictly forbade them to do so. (2, III, 7, in Sexto.)

The prohibition did not affect the Supreme Pontiffs; Innocent III granted numerous expectative graces to poor clerics, to students and secretaries in the Curia. Innocent IV made a still more liberal use of them; this gave occasion to abuses and caused considerable dissatisfaction. The canons of St. Martin of Tours complain that they see every day their prospective successors waiting for their death like crows for corpses. (Math. Paris, Chronica Majora, vol. vi, p. 104.) Clement V promised in 1310 not to grant expectatives for three years but he could not resist the importunities of petitioners. John XXII was not more successful; Benedict XII made serious efforts to effect a reform and he reduced the number of expectatives from 1241 in 1335 to 40 in 1341, but Clement VI went back to the old practice and expectatives so multiplied that Bishops found themselves unable to dispose of any benefice in their dioceses as at every vacancy clerics presented themselves with expectative letters from the Holy See.

Popes found there a means of rewarding services rendered to them and principally of giving assistance to poor clerics ordained without canonical title; these flocked to the papal court particularly at the beginning of a new pontificate to present their petitions *in forma pauperum*. A contemporary writer states that at least 100,000 of them came to Avignon in 1342. (Baluzius, Vitæ Paparum Avenionensium, Mollat, vol. i, p. 298, Paris, 1914.) One of the examiners of poor clerics for the dioceses of Cologne and Mayence says that in one year he had 6000 candidates. (Mollat, l. c., p. 70, 76.)

Since the Council of Trent Roman Pontiffs have rarely issued expectative letters except for the appointment of coadjutors with right of succession. 274. (*b*) Mandates of provision were requests or commands addressed by Popes to Ordinaries asking them to confer a certain benefice of their diocese on a determined cleric. Innocent II sent a request of this nature to the Archbishop of Compostella in favor of a cleric named Aria (1137). Eugene III directly appointed the successor to the Archdeacon of Middlesex in England. Under Adrian IV, Alexander III, Innocent III the number of apostolic mandates grew considerably. They justified them on the ground that a Pope has to compensate his faithful servants and also that he must provide for clerics whom their Bishops do not take care of, and occasionally accede to the desires of princes. (Mollat, p. 42; Roland, p. 120.) Ordinaries or chapters did not always welcome the Pope's appointees. Alexander III having given a prebend in the cathedral of Soissons to one of the king's chaplains, the canons excommunicated and expelled him. Innocent III had to employ censures to obtain obedience from the canons of Poitiers on a similar occasion. At Wurtzburg, clerics sent to execute an apostolic mandate from Innocent VI were thrown into the Mein. In England the parliament of Carlisle (Jan. 1307) entered a strong protest against the appointment by Clement V of numerous strangers particularly Italians to English benefices. (Mollat, p. 240.) Similar complaints came from other countries; the Popes promised to eliminate abuses or even suspended for a time the issuing of pontifical mandates but

circumstances often obliged them to revive the old custom.

275. (*c*) The mandates of provision and expectative graces granted by Innocent II (1137) and Eugene III (1152) and more frequently by Alexander III, Innocent III, and their successors implied reservation to the Holy See of the benefices which they affected. Hence whilst Gratian's Decree has no provision regarding reservations the Collection of Gregory IX (1234) contains several of them (6, 37, 38, X, III, 5; 4, X, III, 8; 30, 37, 38, 40, X, 1, 3), but these were special reservations called by canonists affections; they concerned one individual benefice and only for a particular case. Clement IV introduced the first reservation by general and permanent law.

Roman Pontiffs had gradually adopted the practice of taking into their hands the appointment of the successors to beneficiaries who died at the papal court but inferior prelates often tried to anticipate and frustrate the Pope's action; Clement, therefore, reserved to himself all benefices becoming vacant by death of the incumbent in the Curia. (Licet Ecclesiarum, Aug. 27, 1265; 2, III, 4, in Sexto; Mollat, p. 24; Roland, p. 146.)

Boniface VIII confirmed the Const. *Licet Ecclesiarum,* annulled all appointments contrary to it and extended the meaning of "death in curia" to include all who died within about twenty miles, *duo dietæ,* two days' journey, of the papal residence (Piæ Sollicitudinis, May 5, 1295; Præsenti, 1298; 34, iii, 4, in Sexto). Clement V reserved to himself offices which had belonged to Cardinals, papal nuncios, chaplains, or officers of the curia

and those whose titulars would resign in the hands of the Pope or be transferred by him. John XXII (Ex debito, Sept. 15, 1316) added those becoming vacant through any papal intervention and all benefices major or minor left vacant by members of the curia or pontifical family such as vice-chancellors, chamberlains, auditors, scribes, chaplains, penitenciaries, etc. This increased considerably the number of reservations. Subsequent Popes still added to the list particularly Benedict XII (Ad Regimen, Jan. 11, 1335), Clement VI, and Urban V who now inserted this legislation in the general rules of the Roman Chancery.

276. As a result of this development of discipline the Holy See appointed to nearly all benefices. Various causes had led to this centralization of power. In the confusion of feudal society the Roman Pontiffs wished to maintain a close union of the clergy throughout the world with the centre of Catholic unity; they needed resources to meet the heavy expenses of their complicated administration and control of benefices enabled them to obtain some assistance. Then local Ordinaries, temporal lords often absent from their dioceses, absorbed by many other preoccupations neglected to fill vacancies with due promptitude or conferred benefices on unfit candidates; they failed to provide for the proper support of many of their clerics and to prevent lay interference in ecclesiastical appointments. Papal intervention proved in many cases the only efficacious remedy. On the other hand its frequency opened the door to many abuses and aroused strong opposition.

After the death of Urban V efforts were made

in several countries to abolish papal reservations almost completely. At Constance, to give some satisfaction to the Bishops of England, France, and Germany, Martin V entered into an agreement by which the Pope and the local Ordinary would appoint to benefices alternately. (April 5, 1418.) This particular arrangement entered afterwards into the common law with some modifications and was inserted in the rules of the Chancery. By the ninth rule Bishops who accept the law of residence may appoint to benefices which become vacant during the months of February, April, June, August, October, and December. In other dioceses the Pope appoints to benefices becoming vacant during the first two months of each quarter, that is, January and February, April and May, July and August, October and November; residing Bishops, then, have the appointments for six months of the year, the others during four only. (Riganti, Commentaria in Regulas, Constitutiones et Ordinationes Cancellariæ Apostolicæ, Regula nona, vol. ii, p. 3; Dictionnaire d'Histoire et de Géographie Ecclésiastiques, Paris 1913, Alternative.)

Since the sixteenth century Roman Pontiffs have reserved to themselves by way of penal measure benefices which become vacant because of heresy, simony, disregard for the law on ecclesiastical dress, neglect of canonical forms particularly of the Tridentine *concursus,* etc. (Wernz, 333.)

Concordats and custom had modified the prescriptions of the common law for several countries in modern times.

The present law maintains some of the ancient reservations and abrogates several of them.

277. 2. *Local Ordinaries and Cardinals.* 1°. Local Ordinaries have authority to confer all benefices in their territory and Cardinals the benefices in the titles or *diaconiæ* except for some provision to the contrary.

The Vicar General does not possess this power except by special mandate; the Vicar Capitular has authority to appoint to parishes of free collation only when the see has been vacant at least one year. He can not appoint to other perpetual benefices of free collation but he can confirm an election, accept a presentation and give the institution. (Can. 455 § 2, n. 2, 3.)

2°. During the first centuries Bishops exercised this power freely and disposed practically of all offices and benefices in their dioceses. (Thomassin, l. c., c. 41, 42.) As seen before, since the twelfth century Popes have restricted its use in various ways and under the present discipline it is restricted by: (*a*) *Devolution.* If the Ordinary fails to fill a vacancy within six months from the moment it became known to him the appointment to the benefice passes to the Holy See. The law authorizes him, however, to take a longer time for the appointment of parish priests if in a particular case he deems this course more prudent by reason of special circumstances. (Can. 458.)

Formerly the Metropolitan corrected the negligence of his suffragants in this matter (Boniface VIII, Quanquam in casu negligentiæ, 18, I, 6, in Sexto), but in modern times his rights have become chiefly honorific.

(*b*) *Exclusion of Coadjutors.* The Holy See alone can give coadjutors to beneficiaries whether with or without right of succession. A Bishop

may, however, appoint without right of succession vicars coadjutors or co-operators to assist a pastor. (Can. 475, 476.)

278. (*c*) *Reservations to the Holy See.* Ancient canonists distinguished between special and general reservations the latter having no annulling effect, according to some, except when explicitly stated. Most of them did have that annulling clause at least in the rules of the Chancery if not in their original form; in any case the Code leaves no room for such distinction as it declares null all appointments by inferiors to benefices reserved to the Apostolic See.

The rules of the Chancery have lost their binding force and the following benefices alone remain reserved to the Holy See as provided in the Code:

i. All consistorial benefices and all dignities in cathedral or collegiate churches. (Can. 396.)

ii. All benefices, even those involving the care of souls, which become vacant by the death, promotion, renunciation or transfer of Cardinals, Legates of the Apostolic See, major officials of Sacred Congregations, Tribunals and Offices of the Roman Curia and members of the Pope's household such as chamberlains, domestic prelates, protonotaries, chaplains, even though they do not reside in Rome and their title is a merely honorific one as long as they still retained it when the benefice became vacant. Thus a parish left vacant by the death of a domestic prelate is reserved to the Holy See and appointment to it by the Ordinary would be invalid;

iii. Benefices existing outside of Rome but becoming vacant by death of the beneficiary in

Rome. The present law does not use the term *in curia* but *in Urbe* and it does not mention the *duæ diaetæ* of the ancient law. Nothing indicates that this reservation now ceases during the vacancy of the Apostolic See or if the Pope has not used his right within a month;

iv. All benefices invalidly conferred because of simony. (Can. 729.) This is the only penal reservation retained in the Code.

v. All benefices with which the Roman Pontiff has dealt personally or through a delegate in one of the following ways: by declaring the election to the benefice null and void, by forbidding the electors to proceed to the election, by accepting the renunciation of the incumbent, by promoting him, transferring him or depriving him of the benefice, by giving the benefice *in commendam*. Thus the appointment of a successor to a pastor promoted to the episcopate is reserved to the Holy See.

These rules apply only to perpetual or irremovable benefices; manual benefices the titular of which is not irremovable do not come under these provisions except for an explicit declaration to the contrary; nor do benefices subject to lay or mixed patronage.

Special laws govern benefices founded in Rome.

Some of the reservations enumerated above may not hold in some places because of concordats, legitimate customs, special Indults, or acquired rights. The Code has not changed previously existing conditions. (Can. 3–6.) In the United States no custom could exist against reservation of benefices as long as there were no benefices.

II. CONDITIONS ON THE PART OF THE APPOINTEE.

(Can. 1436, 1437, 1442.)

279. 1. No benefice can validly be conferred on a cleric against his will and without his express acceptance. The Ordinary may ask him to accept; he may command him under certain circumstances (Can. 128) but he can not force him to do so or supply his consent.

2. No one can bestow a benefice upon himself; a Bishop could not appoint himself to one of the parishes of his diocese.

3. *Incompatible Benefices.* No cleric can accept or retain incompatible benefices either in his own name or *in commendam,* that is, with the regular or with a merely commendatory title giving him right to the fruits of the benefices without having to discharge the duties connected with them. To evade the laws enacted against the plurality of benefices some ecclesiastics would receive one *in titulum* and others only *in commendam.* Hence the necessity of including commendatory possession also in the condemnation. (Thomassin, P. ii, L. iii, c. 10–21.)

Canon Law considers as incompatible, benefices the duties of which one single beneficiary can not discharge personally as, for example, those which require residence or presence in distinct places or the whole attention of the incumbent.

From a different point of view benefices are canonically incompatible when the fruits of one of them suffice for the decent support of the beneficiary.

A cleric loses *ipso facto* the benefice he holds if he accepts and obtains pacific possession of an-

other which is incompatible with the former. (Can. 188.) If he attempts to retain the first as well as the second he loses both. (Can. 2396.)

Ecclesiastical legislation against cumulation of offices or benefices began as early as the sixth century. (Chalcedon, 451, Can. 10; Thomassin, P. ii, L. iii, c. 1–9.) Abuses became more frequent with the organization of benefices having distinct and independent revenues. Popes and Councils struggled with them for a long time without much apparent success. (Alexander III in Lateran Council, 1179, Can. 13; Innocent III, Lateran, 1215, Can. 29.) In the Council of Vienne, William Le Maire denounced those clerics who possessed four or five offices or dignities and as many as ten or twelve prebends if not more. At times, he says, one cleric holds benefices sufficient for the support of fifty or sixty persons. The Council of Trent renewed the decrees of previous synods. (Sess. vii, de Ref., c. 4, 5; Sess. xxiv, c. 17.) The disorder has practically ceased in modern times with the disappearance of rich benefices.

280. 4. Secular benefices must be conferred exclusively on secular clerics and religious benefices on religious members of the order to which the benefice belongs. (Can. 1442.)

The former discipline excluded only regulars or religious with solemn vows from secular parishes; the present law applies to all religious whether with solemn or simple vows but not to members of communities which do not constitute a religious order like the Vincentians, Eudists, and others.

A Bishop, then, can not without Apostolic In-

dult appoint a religious as pastor of a secular parish unless the order enjoy a special privilege permitting such appointments; he might in case of necessity use a religious as administrator with all the powers of a pastor.

III. MODE OF COLLATION. (Can. 1438, 1440, 1441.)

281. 1. Appointments to secular benefices should be for life except for a stipulation in the foundation, an immemorial custom or a special Indult to the contrary. Regularly, then, titulars of secular benefices are irremovable. All newly erected parishes enjoy the privilege of permanency unless in the act of erection it be stated as the Code permits, that the pastor will not be irremovable. (Can. 454, § 3.)

2. Ecclesiastical benefices must be conferred without diminution which excludes all changes made on the occasion of appointments and calculated to render a benefice less desirable as, for example, reducing the endowment or revenues, imposing new burdens spiritual or temporal without corresponding compensation.

The Bishop may, however, as said before impose on a benefice a temporary pension to last for the life time of the beneficiary. In the case of parochial benefices this pension must be in favor of a former pastor or curate.

3. Appointments to benefices should be gratuitous; the law condemns as simoniacal deductions made from the revenues in favor of the appointer, the patron or other persons as also compensations or payments which the appointee would have to offer them in the act of preferment.

IV. TAKING POSSESSION OF THE BENEFICE.

(Can. 1443–1447.)

282. 1. Appointment to a benefice is completed by taking possession of it or by installation called in Canon Law corporal institution, which marks the exact moment when the appointee acquires the rights and actually assumes the obligations connected with the benefice or office.

1. *Authority.* No one should, on his own authority, take possession of a benefice conferred on him but he must receive it from the qualified superior. Violation of this law renders one liable to severe punishment. (Can. 2394.)

In the case of non-consistorial benefices, for example, of parishes the right of instituting appointees, of installing them, and giving them actual possession or corporal institution belongs to the Ordinary who may delegate for this any ecclesiastic.

Usually Bishops take possession of their diocese by presenting the Papal Bulls to the chapter or to the diocesan consultors.

If the law requires the profession of faith the appointee must make it before taking possession. (Can. 1443, 1406.)

2. *Manner.* The installation or corporal institution should take place in the manner determined by local legislation or legitimate custom unless for a just cause the Ordinary dispenses from these formalities expressly and in writing. The episcopal dispensation has then the effect of formal installation.

The law permits taking possession by proxy with a special mandate.

283. 3. *Time.* When the common law does not fix any time for taking possession of the benefice the Ordinary should do so and if the appointee fails, through his own fault and without legitimate excuse, to receive corporal institution within the allotted time, his negligence is considered by law as amounting to renunciation and the Ordinary should declare the benefice vacant. (Can. 188, n. 2.)

4. *Effects.* (*a*) From the moment he has taken possession and not before, the beneficiary has a right to the fruits of the benefice and to the advantages or privileges connected with it.

(*b*) Pacific possession in good faith for three years suffices of itself to give by prescription a title to the benefice should the original one turn invalid, unless it would be by simony.

The possessor has to prove actual, uncontested possession for three continuous years and absence of any simoniacal transaction.

(*c*) Anyone claiming a benefice peacefully possessed by another must introduce a petitory, not possessory, action, that is, one tending to obtain something not to retain it.

In the petition he must give the name of the actual possessor, state the duration of this possession and the causes which in his estimation render it illegitimate. The benefice can not be conferred on him until he has proved his contention and secured a decision of the court in his favor.

The burden of the proof lies on the petitioner; presumption stands for the actual possessor.

CHAPTER IV

RIGHT OF PATRONAGE OR ADVOWSON

(Can. 1448–1471.)

(Wernz-Vidal, n. 280; Thomassin, P. ii, L. 1, c. 29–32; Thomas, Le droit de propriété des laiques au Moyen Age, Paris, 1906; Catholic Encyclopædia, Patron, Patronage; A Dictionary of Christian Antiquities, Smith-Cheetham, Patron.)

I. ORIGIN.

284. In a spirit of gratitude the ancient Church granted to benefactors spiritual privileges like insertion of their names in the sacred diptychs and mention in public prayers. In the sixth century in the East those who erect a church or support it seem to have a share in the administration of its property and the choice of its ministers. Emperor Justinian only forbids them to make appointments against the Bishop's will.

In the West the Council of Orange (441, Can. 10) recognizes the right of a Bishop who had built a church on his own estate but outside of his diocese to nominate the rector, actual appointment remaining with the local Ordinary as well as the consecration of the church. Laymen obtained the same privilege a little later. (Toledo, 655, Can. 2; 32, C. xvi, 7.)

But, largely under the influence of Teutonic conceptions of the rights of land owners, the founders of churches soon put forth more radical claims. On the principle of germanic law that a freeman can dispose at will of his domains and of everything on them they asserted the right of disposing of places of worship erected on their estates and of appointing or dismissing their ministers.

The Council of Orléans (541, Can. 7, 26, 33) had enacted that those who build and endow churches should not attempt to appoint their ministers without the Bishop's approval and that clerics thus appointed continued under ecclesiastical rule and should not be impeded in the discharge of their duties by the owner of the estate or his agents; about a century later the Council of Chalons-sur-Saone (650, Can. 14) refers again to founders of churches who maintain their right both to appoint and to govern the clergy independently of the Bishop. The synod condemns those practices and affirms the exclusive right of the Bishop to appoint clerics and to dispose of the revenues of the churches.

285. With the progress of Feudalism, the system of patronage, its outgrowth, attained still greater development. When Charles Martel and his successors had appropriated to the crown large portions of the Church lands to bestow them as benefices on the officers of their armies these too claimed the right of appointing and dismissing clerics in the churches within their fiefs and also of disposing of some of their revenues. Then churches and monasteries unable in those troublous times to defend their lands against usurpa-

tion would often place themselves under the protection of more powerful lords who became their advocates and this title too carried with it certain privileges. Hence frequent interference of lay persons in appointments to ecclesiastical benefices and numerous abuses.

When after the Conflict of Investiture the Popes, by the Concordat of Worms, had secured the freedom of episcopal elections, they turned their attention to lower benefices to withdraw them from illegitimate secular control. This was effected substantially by the Lateran Councils of 1179 and 1215. Abuses still crept in from time to time but a very definite legislation, the work chiefly of Alexander III, now determined in detail the exact right and duties of patrons. It has remained essentially the same to the present day.

286. In America Pope Julius II had granted to the Spanish Kings the rights of patronage over all parishes in their possessions. After the cession of Louisiana to the United States the rights of the Spanish crown ceased. Lay Catholics formed associations known as boards of trustees for the purpose of gathering the funds necessary for the purchase of land, the erection of churches and the support of the clergy. They held church property in their name, administered it and often procured from Europe priests whom they maintained. In good faith they may in the beginning have considered themselves as successors in these matters to the Spanish authorities and heirs to their privileges. But in other parts of the country which had never been under Spanish rule still more unreasonable pretensions were put forth. As early as 1786 the trustees of New York as-

serted their right as owners of St. Peter's church to choose their pastor and to dismiss him and they did dismiss the one appointed at their request by the Prefect Apostolic to put another in his place. Trustees in other cities followed their example and this led to acts of rebellion against Bishops, disorders and scandals which lasted for several years. In 1829 the First Provincial Council of Baltimore condemned the abuses of trusteeism and explicitly denied the existence of any right of patronage in the United States. The fact of contributing to the erection or support of a church does not confer that right on any person. (n. 6.)

II. NATURE AND SPECIES. (Can. 1448–1449.)

287. 1. By right of patronage the Code understands the sum of privileges, accompanied by some obligations, belonging by ecclesiastical concession, to the Catholic founder of a church, chapel, or benefice or to his successors.

Patronage confers rights but also some obligations. The Church grants those privileges only to Catholics and usually to founders of benefices but as an act of generosity on her part. Patrons can transfer or transmit their privileges to others.

2. The right of patronage may be: (*a*) Real and attached to a certain object, for instance, to an office, or personal belonging to a certain person as such;

(*b*) Ecclesiastical and based on an ecclesiastical title, v. g. a canonry, or laical and derived from a secular title such as hereditary succession;

or mixed if both titles concur as if a canon has a right of presentation as canon and at the same time as heir to the one who had it before;

(*c*) Hereditary and transmitted by succession, or familial, *gentilitium,* reserved to the members of a family understood in a more restricted or comprehensive sense, or mixed when it can pass only to heirs members of the family.

III. SUPPRESSION OR LIMITATION OF THE RIGHT OF PATRONAGE. (Can. 1450–1454, 1471.)

288. The right of patronage having often in the past proved an obstacle to the good administration of dioceses particularly in modern times when Bishops need greater freedom in appointments to parochial benefices the Church would wish to abolish it if possible or at least to restrict it as far as compatible with already acquired rights; hence the Code enacts that:

1. For the future no right of patronage can validly be established on any title whatsoever.

To the faithful who have erected a church or endowed a benefice entirely or in part Ordinaries may grant spiritual favors, temporary or perpetual, proportioned to their liberality, v. g. an annual Mass.

They may also admit the foundation of a benefice with the condition that the founder or the cleric designated by him will receive the first appointment to it.

2. Local Ordinaries should if possible induce patrons to accept spiritual suffrages temporary or even perpetual for themselves or their families in place of the right of patronage they enjoy or

at least of the right of presentation which the Church is particularly anxious to suppress.

If patrons insist on retaining all their rights they can do so and they will have to exercise them in accordance with the following rules.

3. If in any place the election or presentation of candidates is made by popular vote this can be tolerated only on condition that the people will select or vote on, one out of three designated by the local Ordinary.

289. 4. *Transmission.* (*a*) Personal right of patronage can not be transmitted validly to infidels, public apostates, heretics, schismatics, members of secret societies condemned by the Church or any excommunicated persons after declaratory or condemnatory sentence. In Germany and Austria it had become customary after the peace of Westphalia for Catholics to have the right of patronage over Protestant and Protestants over Catholic benefices. The Holy See has also in some Concordats granted the right of patronage to Protestant princes.

(*b*) Transmission of the right of personal patronage to other persons unless it be by virtue of the laws of foundation requires the consent of the Ordinary given in writing, v. g. for a donation, exchange, etc.

In case the family or the branch of it to which the law of foundation reserves the right of patronage becomes or threatens to become extinct the right can not be bequeathed to some outsider nor may the Ordinary allow it to pass to someone else by donation. (Can. 1740 § 1, n. 4.)

(*c*) If the object which carries with it the right

of patronage happens to fall into the hands of one of the persons enumerated above as ineligible for it, the right remains temporarily suspended.

5. *Proof.* No right of patronage is admitted unless convincingly proved by authentic document or other legitimate evidence.

If the Holy See either by a Concordat or by special Indult has granted to some person the right of presentation to a vacant church or benefice this does not imply a right of patronage and the privilege of presentation should be interpreted strictly according to the tenor of the Indult.

IV. RIGHTS OF PATRONS AND THEIR EXERCISE.

(Can. 1455–1460.)

290. 1. Patrons enjoy the following privileges: (*a*) When the church or benefice under patronage becomes vacant they may present for it a cleric whom the superior having the appointment must accept unless some serious reason justifies or calls for refusal.

(*b*) Should a patron without any fault of his own find himself reduced to poverty he would have a right to fair maintenance from the superfluous revenues of the benefice if any remain after fulfillment of all obligations and deduction of necessary support for the beneficiary. The patron retains this right even if he had renounced the right of patronage in favor of the church or reserved to himself from the beginning a pension which proves insufficient.

(*c*) If local custom permits the patron may have his personal or family coat of arms placed in the church; at processions and similar functions he has precedence over all other laymen; in church he may occupy a more prominent seat but outside the sanctuary and without canopy.

2. Married women exercise the rights of patronage personally; minors exercise it through their parents or guardians; if these are non-Catholics the rights remain suspended temporarily.

3. Whether the patronage be lay, ecclesiastical, or mixed, patrons have four months to exercise their right of presentation. The time runs from the moment the superior who gives the institution notifies them of the vacancy and if the benefice requires a *concursus,* lets them know the priests declared eligible.

The law of foundation or legitimate custom may demand prompter action; on the other hand the time does not run as long as a legitimate obstacle prevents the presentation.

If a controversy arises which can not be settled within the four months regarding the right of presentation between the Ordinary and the patrons or between the different patrons themselves or between candidates presented by the patron regarding their relative claims, the appointment should be suspended pending the controversy and if necessary an administrator given by the Ordinary to the vacant church or benefice.

291. 4. *Mode of Presentation.* (*a*) If several persons enjoy individually the right of patronage they may enter into an agreement both for them-

selves and their successors to exercise that right alternately; but the agreement needs for its validity the Ordinary's written consent, which once given neither the Ordinary himself nor his successors can withdraw against the will of the patrons.

(*b*) When the right of patronage is exercised by a college or moral body the candidate who obtains the absolute majority in a first or second ballot or the relative majority in the third one secures the presentation. If in the third ballot several who have a relative majority obtain the same number of votes they all have the benefit of the presentation.

(*c*) When the several persons who exercise the right of presentation individually have not agreed to take turns the candidate who obtains a relative majority secures the presentation and if several obtain the same number of votes although a majority relatively to the others they all share in the presentation.

(*d*) A person who exercises the right of patronage on several titles has as many votes as titles.

(*e*) Before the presentation has been accepted every patron may propose not only one but several more candidates either simultaneously or successively; he must do so, however, within the prescribed time and a subsequent presentation must not exclude previous ones.

V. ELIGIBLE CANDIDATES. (Can. 1461–1465.)

292. 1. A patron can not exercise the right of presentation in his own favor nor add his own vote

to that of other patrons so as to obtain for himself the required number of suffrages.

2. Whenever the appointment to a church or benefice calls for a *concursus* even lay patrons must choose their candidates from among the clerics approved in the *concursus*.

3. Patrons must present candidates well fitted for the office, that is, possessing at the time of the presentation or at least of its acceptation all the qualities required by common law, particular law, or the charter of foundation.

4. It is for the local Ordinary to receive the presentation and to pronounce on the fitness of the candidates. To form a prudent opinion he should make a careful investigation and obtain all necessary, even secret, information. If the Ordinary feels bound to reject the candidate presented to him he does not have to give the reasons for his action to the patron.

5. Should the candidate be declared unfit the patron may present another but he must do so within the four months allowed by law for the exercise of his right and not let the time lapse through his fault. If the second candidate fails also to meet the requirements the patron can not present a third one but the Ordinary appoints this time freely to the church or benefice. In case, however, the patron or candidates thinking themselves wronged would manifest their intention within ten days after receiving notice of the rejection, of having recourse to the Holy See for a reversal of the Ordinary's decision, the appointment remains suspended. Meanwhile the Ordinary may put the vacant benefice or church in care of an administrator.

VI. EFFECTS OF PRESENTATION. (Can. 1466–1468.)

293. 1. A candidate presented according to legal prescriptions and found duly qualified, acquires, as soon as he accepts, a right to canonical appointment.

The right of making the appointment or giving the canonical institution belongs to the local Ordinary but not to the Vicar General without special mandate.

If several candidates are presented all properly qualified the Ordinary chooses the one whom before God he considers as best fitted for the office.

2. The canonical institution, whether the benefice involves the care of souls or not, must be given within two months of the presentation except for some legitimate impediment.

3. Should the candidate chosen for presentation renounce his right or die before he receives the canonical institution the patron may exercise his right again.

VII. OBLIGATIONS OF PATRONS. (Can. 1469.)

294. 1. Patrons who would see the property of the benefice going to waste or ruin ought to notify the local Ordinary but not meddle in the administration of the benefice.

2. Those who enjoy the right of patronage as builders of a church must rebuild the latter if it should collapse or make such repairs as the Ordinary considers needful unless by law, special legitimate custom or agreement this obligation devolves on some other persons. By common law

if the fabric of the church possesses sufficient resources it has to meet these expenses even before the patron. (Can. 1186.)

3. Patrons on the title of endowment ought to supply more revenues when the original ones do not suffice for the carrying on of divine worship or the maintenance of a titular.

4. While the church is in ruin, or in need of important repairs or lacking the necessary income the right of patronage remains suspended. The Ordinary should set a certain time for the patron to rebuild, repair or re-endow the church under pain of loss of his privileges, in case of neglect. If he complies with his obligations within the appointed time the right of patronage revives, if not it ceases *ipso facto* without further declaration.

VIII. LOSS OF THE RIGHT OF PATRONAGE. (Can. 1470.)

295. The right of patronage may cease by the neglect of duty just mentioned and also:

1. By renunciation, partial or total, but renunciation by one of several patrons does not affect the rights of the others;

2. By an act of the Holy See revoking this right or suppressing permanently the church or benefice. The Holy See does not take such measures without grave reasons but it retains the power of doing so since the rights of patronage remain always a concession of the ecclesiastical authority;

3. By legitimate prescription against the patron; this implies tacit renunciation;

4. By union of the church or benefice with one

of free collation or its transformation into an elective or regular church; all this with the consent of the patron which amounts to a renunciation.

5. By destruction of the object which carried with it the right of real patronage or by extinction of the family or branch of it to which the charter of foundation reserved the right; in this latter case the patronage does not become hereditary or transmissible by last will to some other person. The last member of the family could not when extinction appears certain bequeath it to an outsider nor can the Ordinary authorize him to dispose of it by donation.

6. By the following crimes: attempt by the patron to transfer his right to another in a simoniacal manner, fall of the patron into apostasy, heresy, or schism; unjust usurpation or retention by him of property or rights belonging to the church or benefice; murder or mutilation by the patron or his agents of the rector or other cleric attached to the service of the church or having a benefice in the same.

This last crime causes the loss of patronage also for the heirs; the others affect only the patron himself.

For incurring this loss a declaratory sentence is required and suffices.

7. By censure or infamy of law. Any person incurring a censure or infamy of law becomes unable after a condemnatory or declaratory sentence to exercise any right of patronage as long as he remains under the censure or legal infamy.

CHAPTER V

RIGHTS AND DUTIES OF BENEFICIARIES

(Can. 1472–1483.)

(Thomassin, P. iii, L. ii, iii; Wernz, iii, n. 185–189; Wernz-Vidal, ii, n. 319–321; Cocchi, n. 141; Vermeersch, n. 797.)

This chapter deals only with the rights and obligations of beneficiaries considered as such and in general, not with those arising from the clerical character, nor with those connected with special benefices like canonicates, pastorates, etc.

296. 1. *Rights of Beneficiaries.* 1°. *General Principle.* Every beneficiary enjoys all the spiritual and temporal rights attached to his benefice from the moment he takes canonical possession of it.

The spiritual rights, more immediately connected with the office, may include jurisdiction, precedence, etc. The temporal rights pertain chiefly to the income from the benefice.

2°. Right to the fruits of the benefice; its limitations. (*a*) The beneficiary becomes not the lord or owner, but the usufructuary, of the benefice; as such, although he can not dispose of the benefice itself he has the right to use the fruits thereof

for his decent support even though he might happen to have sufficient resources of his own to meet all his needs.

297. (*b*) This right, however, has its limitations. A beneficiary may use the fruits of his benefice only as far as required for his decent support; whatever is left over, or the superfluous revenues, he ought to give to the poor or to charitable institutions. In what sense must we understand this rule?

i. It concerns only ecclesiastics who possess a canonical benefice like pastors, canons, Bishops, but not, for example, curates, ordinary chaplains, or professors;

ii. It does not apply to the revenues which canonists call patrimonial, quasi-patrimonial, or industrial and parsimonial. A cleric may freely dispose of his personal patrimony and of the resources acquired by his industry or special labor, for example, by his writing, lecturing, or preaching outside of his church; as also of the offerings made to him by the faithful without any obligation and of the Mass stipends which represent a personal service independent of the benefice. He may likewise freely dispose of his savings, that is, of that portion of the beneficial revenues which he might legitimately have spent on himself but saved by his frugality.

The rule applies exclusively to beneficial fruits, that is, to those revenues which accrue to the beneficiary from the endowment of the benefice and by canonical law constitute his regular support. Formerly when endowments consisted of landed property, houses or permanently invested funds the income from these constituted the strictly ben-

eficial revenues. Only in modern times did stole fees commence to be assimilated to them. (Wernz, n. 183.)

The present law, in the absence of sufficient real property or invested capital, accepts as part at least of the endowment contributions due by families or moral persons, voluntary but reliable offerings of the faithful belonging to the rector of the church and stole fees imposed by diocesan law or legitimate custom. (Can. 1410.) These do form part of the endowment when it is so stipulated in the erection of the benefice or implied in the fact that otherwise the benefice would lack the required resources for the support of the titulary. Thus they become really beneficial revenues and must come under the rule which governs the latter, although some canonists hesitate to draw this conclusion. (Vermeersch, n. 798.)

298. iii. The decent support to which a beneficiary has a right comprises food, clothing, lodging, library, legitimate recreation, practice of hospitality according to custom and as becomes an ecclesiastic, reasonable provision for possible sickness or old age; but not what might savor of luxury, self-indulgence, or vain ostentation. The Council of Trent (Sess. xxv, c. 1, de Ref.) orders ecclesiastical beneficiaries to be satisfied with modest furniture, a frugal table and diet, and to give heed that in their whole manner of living everything manifest simplicity, zeal for God's glory, and contempt of vanities. Custom, the appreciation and practice of prudent conscientious ecclesiastics and the sentiment of reasonable, pious Christians may help to determine more accurately the limits between decency and luxury according

to circumstances of time, place, and person.

iv. Many of the ancient canonists considered this obligation of giving superfluous beneficial revenues to the poor or pious institutions as one of strict justice, on the theory that ecclesiastical property belonged to the church and to the poor, not to beneficiaries who received only permission to use it as far as they needed. (Azor, Navarrus and many others quoted by Benedict XIV, De Synodo, L. vii, c. 2, n. 6.) The Fathers speak very strongly against those who appropriated to themselves more than necessary, calling them robbers of the poor and sacrilegious thieves. (Thomassin, L. iii, c. 26–42.)

More commonly modern canonists hold that since the division of ecclesiastical funds into three or four distinct portions the one assigned to clerics really belongs to them; only charity, religion, or the precept of the Church oblige them to reserve for the poor or pious works what does not go for their reasonable support. (Gennari, Consultations Morales, lxxxvii.)

299. 2. *Obligations of Beneficiaries.* 1°. *Reception of Required Orders.* (Can. 1474.) When a benefice calls for a certain Order, as for example the parochial benefice which supposes the priesthood, the beneficiary must receive this Order before he can be appointed.

The ancient law permitted the appointment and allowed some time after for the reception of the Order.

2°. *Recitation of the Breviary and Other Duties.* (Can. 1475.) Beneficiaries must fulfill all the duties connected with their benefice by com-

mon law, legitimate custom, or foundation clauses; all of them have to recite the divine Office even those not yet in Sacred Orders. Should they without legitimate excuse neglect this recitation they would forfeit their right to the fruits of the benefice in proportion to the extent of the omission. Pius V defines thus this proportion (Ex proximo, Sept. 20, 1571): omission of the entire office for a day or week entails loss of all the revenues of the benefice corresponding to that day or week; omission of Matins and Lauds entails loss of half of the revenues; omission of one of the other hours, loss of one sixth part. Canonists generally understand this rule to suppose a beneficiary with no other obligation than the recitation of the canonical hours and no other title to a support; but one who has other duties also and fulfils them will not by the mere omission of the Office lose all the fruits of his benefice but only that portion of them which corresponds to the work omitted. According to common estimation in the case of a parish priest or of a Bishop the recitation of the canonical hours represents only the fourth or fifth, some say the tenth, portion of their obligations and, therefore neglect of it would involve only the loss of the fourth, fifth, or tenth part of the revenues of the benefice. (Noldin, ii, n. 759; Genicot, ii, n. 47.) It might not even have that effect if, as occurs in some countries, the revenues were so small as to form a barely sufficient compensation for other pastoral duties duly fulfilled. Neglect of these duties may be punished also by privation of the fruits of the benefice but this would require a special

sentence (Can. 2184) except in the case of neglect of residence in which the loss of all beneficial fruits is incurred *ipso facto*. (Can. 2381.)

Revenues thus lost do not belong to the beneficiary; he is bound in justice to give them to his church or to the diocesan seminary or to the poor.

300. 3°. *Administration of Beneficial Property.* (Can. 1476–1479.) (*a*) A beneficiary as guardian, not owner of the property belonging to the benefice must administer it in accordance with law, that is, with all the care and within the limits prescribed by it, preventing, as far as possible all deterioration and aiming at some improvement. (Can. 1523.)

If through his fault the benefice suffers some loss he ought to offer adequate compensation for it and, if needed, the local Ordinary should compel him to do so. Negligence in this matter would suffice to justify the administrative removal of a pastor. (Can. 2147.)

(*b*) The beneficiary has to bear the ordinary expenses connected with the administration of the benefice or the collecting of revenues, for example minor repairs in buildings, replacing old trees in an orchard, etc.

These minor repairs should be made as soon as needed if possible in order to avoid the necessity of more important ones.

Expenses incurred for major or extraordinary repairs in the beneficial residence should be borne by those on whom devolve by law the repairs in the church of the benefice, unless otherwise provided by legitimate custom, mutual agreement, or valid stipulations in the foundation. (Can. 1186.)

(*c*) Lease of beneficial property on condition of payment over six months in advance is not permitted without the local Ordinary's authorization. Long anticipated payments may, in the case of a change of the incumbent, cause embarrassment to the successor and render it difficult for him to recover what belongs to him, from the predecessor or his representatives. Under certain circumstances, however, such contracts may seem the only safe ones. The Ordinary may then allow them but he must take all necessary precautions to remove all danger of loss to the benefice or the beneficiary's successor.

(*d*) The legislator imposes on the local Ordinary the obligation of seeing personally or through Vicars Forfane, to the faithful observance of these rules and the preservation and proper administration of beneficial property.

301. 4°. *Division of Revenues between Predecessor and Successor.* (Can. 1480.) The ancient law contained no very definite provision on this point but the present one possesses all the precision desired. It ordains that the fruits of the benefice for the current year be computed, the necessary expenses deducted and the balance divided between the actual beneficiary and his predecessor or his representatives in proportion to the time each one served the benefice.

If in some places legitimate custom or special statutes duly approved had introduced a different mode of division equitable in itself the Code does not ask for its suppression.

This division of revenues applies only to strictly beneficial ones in the sense explained above.

5°. *Revenues of Vacant Benefices.* In the

ancient Church revenues accruing during the vacancy of a benefice, that is, from the death, resignation, or transfer of the incumbent to the appointment of a successor remained regularly the property of the church or passed to the successor, but this rule was not always respected. (Chalcedon, 451, Can. 22, 25.)

In the thirteenth century several Bishops obtained permission from the Holy See to use those revenues for the general needs of the diocese. Custom introduced this practice in various places under the name of deport. (Thomassin, P. iii, L. ii, c. 37.)

Where it did not exist various methods of distribution had prevailed in different places. Under the present law after deduction of all expenses particularly those necessary for the support of the administrator, one half of the revenues which would belong to the beneficiary go to the endowment of the benefice, or the common fund when there is one, for example in chapters; the other half goes to the church or to the sacristy if they have distinct accounts and may serve for improvements or for the acquisition of sacred vestments and vessels.

If in some place a custom existed of applying all these revenues for the general good of the diocese, it continued in force after the Code.

302. 6°. *Annats.* (Can. 1482.) Under the name of *annatæ, fructus primi anni,* Popes of the fourteenth century, Clement V, John XXII, Boniface IX, reserved to the Apostolic Treasury portion of the first year's revenues of benefices to which they had appointed. Abbots and Bishops had acted in the same manner for some time al-

ready in regard to benefices under their jurisdiction. (Thomassin, l. c., c. 58, 59; Mollat, Les Papes d'Avignon, 1. iii, c. 2.)

The law regulating payment of Annats underwent various modifications in the course of time. In some places it never went into force; in others it became abrogated by custom, concordats, or special concession.

The Code leaves conditions as it found them and only asks that wherever the Annats exist they be kept and that each country retain its special statutes and praiseworthy customs in this regard. Annats were never introduced in the United States.

7°. *Property of the Episcopal Manse or Benefice.* (Can. 1483.) (*a*) Its administration belongs to the Bishop who must take good care of it.

(*b*) It is for him to keep the episcopal residence in proper condition and make at the expense of the manse all necessary repairs unless by some special arrangement that burden fall on someone else, as by civil law it does in some countries.

(*c*) The legislator particularly recommends to Bishops to have an accurate inventory made of all the utensils and movable property that belong to the episcopal residence and to the manse so that all may safely pass to the successor.

CHAPTER VI

RESIGNATION AND EXCHANGE OF BENEFICES

(Can. 1484–1488.)

303. These rules concern almost exclusively non-consistorial benefices. Resignation and exchange of benefices reserved to the Holy See depends on the Supreme Pontiff who has authority to dictate in each case the conditions he deems fit.

The Code has treated of the resignation of Offices in the Second Book (Can. 185–191; General Legislation, n. 341) and the principles therein laid down apply also to the benefices connected with the offices. (Can. 146.)

Here we have only a few provisions regarding more directly benefices.

I. RESIGNATION OF BENEFICES. (Can. 1484–1486.)

(Wernz-Vidal, n. 323; Thomassin, P. ii, L. ii, c. 50; Riganti, Commentaria in Regulas Cancellariæ Apostolicæ, Regula 45.)

Generally speaking the Church leaves everyone free to accept or refuse and likewise to retain or renounce ecclesiastical benefices, but in a few cases special reasons render resignation imprudent, injurious to the common good, dangerous and hence unlawful. Thus:

304. 1. The Ordinary may not accept the resignation of the benefice which a cleric in Major Orders possesses unless the latter has otherwise assured means of subsistence and does not run the risk of falling thereby into a state of want unbecoming an ecclesiastic.

2. If the benefice in question constituted the cleric's ordination title its resignation even if accepted by the Ordinary would be invalid unless the relation of the benefice to the ordination had been explicitly mentioned and the Ordinary had positively authorized the substitution of another legitimate title. In countries where clerics are ordained not for any particular church but for the general service of the diocese this rule can hardly find any application.

By profession in a religious order clerics lose after one year or after three years all the benefices they may possess without further formality. (Can. 584.)

3. An Ordinary has no authority to accept resignations made in favor of another, or resignations with conditions affecting either the appointment to the benefice or the distribution of its revenue, with the condition, for example, that the one who resigns will obtain the benefice again if he survives his successor or that he will continue to have a share in the fruits of the benefice. These conditions would diminish the benefice or interfere with the freedom of appointments.

Resignations in favor of another might tend to introduce hereditary transmission of ecclesiatical benefices which the Church can not approve. For this reason Bishops may not authorize that kind of resignations but the Sovereign Pontiffs

may and they have done so frequently in the past for good reasons, as a remedy to greater disorders. (Riganti, l. c.)

In the case of a disputed benefice the Ordinary may accept the resignation of one of the disputants in favor of the other but not in favor of a third person.

He may also as said before (Can. 1429) impose on parochial benefices a pension for the benefit of a former pastor.

II. EXCHANGE OF BENEFICES. (Can. 1487–1488.)

(Wernz-Vidal, n. 333; Riganti, l. c. Regula 40; Benedict XIV, De Synodo, L. xiii, c. 24.)

305. Exchanges of benefices do not of themselves involve simony but they might readily give occasion to it or to other abuses and, therefore, the Church permits them only with proper cautions.

Alexander III (Tours, 1163, Can. 1) condemned them severely at least when made without sufficient cause and by private authority. Several Popes after him, Urban III, Innocent III, Paul II (1467), Pius V (1568), Benedict XIV (1746), enacted strict measures to prevent abuses. In modern times such exchanges occur more rarely because of the multiplication of benefices removable at will. 1. The present law requires the following conditions for their lawfulness and validity:

(*a*) A sufficient reason, such as, the necessity or utility of the church or some other just, not necessarily grave, cause, for example, a reason of health.

(*b*) Absence of any loss resulting from the exchange for other persons or of undue interference with other people's rights;

(*c*) Consent of the patron when the benefice is one of advowson;

(*d*) Consent of the local Ordinary, that is, of the Bishop; the Vicar Capitular has no authority to sanction such transactions and the Vicar General needs a special mandate for this. Exchange implies resignation of one benefice and appointment to another. It supposes the intervention of the superior who accepts the one and confers the other.

When, therefore, one of the benefices or the two of them are reserved to the Holy See the supreme authority alone can ratify the exchange.

Because also of the implied resignation all the formalities required for the latter are necessary for an exchange. (Can. 185–187.)

306. 2. The Ordinary who is to ratify the exchange has a month to consider the matter; at the end of that time he must either have given his consent or refused it and rejected the application.

3. The exchange takes effect at the moment the Ordinary gives his consent; then each one of the parties to the transaction loses his former benefice and acquires the new one with all the rights connected with it and also with the obligations. (Can. 1487 § 2; Wernz-Vidal, n. 343.)

4. If the benefices which form the object of the transaction are of unequal value the exchange may still take place but the party who gives up a benefice with superior, for one with inferior, revenues can not demand or receive a compensation for the loss under the form either of reserva-

tion of part of the fruits or payment of a certain sum of money or something equivalent. The Church does not permit this because it might look like trafficking in sacred things.

5. Ancient canonists speak of triangular and quadrangular exchanges in which the first person resigns in favor of the second, the second in favor of the third or fourth and the fourth in favor of the first. This amounts to resignation in favor of others which Ordinaries can not authorize. The canons did not approve of these exchanges nor does the present law which permits exchange only between two parties.

TITLE XXVI

OTHER ECCLESIASTICAL NON-COLLEGIATE INSTITUTES

(Can. 1489–1494.)

(Wernz, iii, n. 193–208; Cocchi, n. 159; Blat, n. 397; Vermeersch, n. 812.)

307. 1. *General Notions and Divisions.* Individual human beings endowed with reason possess from nature personality or capacity to acquire and exercise rights; these are physical persons.

Civil and canonical law can grant juridical personality to beings which would not naturally possess it, v. g. to a society, a hospital; these are called legal or moral, as distinct from physical, persons.

Moral persons may consist of several individual human beings united and organized to form one body with an existence and rights distinct from those of each member; these are collegiate or corporate persons such as chapters, confraternities, religious orders.

The legal personality may be given also to objects or institutions such as churches, benefices, hospitals which exercise their rights through, but

possess them independently of, physical persons.

Moral, non-corporate persons are ecclesiastical when endowed with legal personality by ecclesiastical authority or committed to an ecclesiatical body; and lay when erected by private authority or civil power.

To be called pious, as distinct from profane, institutes it suffices that they have for their purpose the exercise of religion or Christian charity whether corporal or spiritual and not simply natural philanthropy.

Merely pious, do not come under the law of ecclesiastical, institutions. Thus in 1920 the Congregation of the Council declared that the Conferences of St. Vincent de Paul although pious associations often praised, encouraged, and enriched with indulgences by Popes and Bishops were lay, not ecclesiastical societies because not organized officially by the Church but by private persons. (A. A. S., 1921, p. 135; Canoniste, 1921, p. 275.)

The present Title deals with ecclesiastical non-collegiate moral persons other than the ones already treated of, *viz.* with hospitals, orphanages, and similar institutions established for a purpose of religion or Christian charity.

308. 2. *Institution.* (Can. 1489, 1490.) 1°. The local Ordinary, which seems to include here the Vicar General and Vicar Capitular, has authority to erect such institutions and confer upon them legal personality and autonomous existence. For this a simple approval would not suffice but a formal decree is required giving juridical personality and capacity to acquire and exercise rights in the Church.

The Ordinary may also, without granting them autonomous existence and distinct personality, commit them to a religious community; by this they become ecclesiastical institutes.

2°. The Ordinary should not give his approval to, still less confer juridical personality upon, any organization unless it be really useful and, moreover, possess sufficient resources or reasonably expect to receive sufficient support to enable it, under the circumstances, to attain its purpose.

3°. In the charter the founder should accurately describe the complete constitution of the institute, its purpose, endowment, administration and mode of government, the use to be made of its revenues and the manner of disposing of its property in case it would go out of existence.

One copy of this charter should be kept in the archives of the institute and another in the archives of the diocese.

3. *Administration.* (Can. 1489.) The rector of the hospital, orphanage, or other similar ecclesiastical institution administers its property according to the rules laid down in the charter. He has the same duties and the same rights as other administrators of ecclesiastical property.

309. 4. *Ordinary's Supervision.* (Can. 1491–1493.) 1°. *Visitation.* The local Ordinary has the right and duty of visiting all such institutions even though they possess juridical personality and autonomous existence or enjoy the privilege of exemption under whatever form, unless some special provision would commit the visitation to another superior. (Trent, Sess. xxii, de Ref., 8.)

He visits also institutions which do not possess

juridical personality but exist under the control of some religious house. Those entrusted to a diocesan community remain under the complete authority of the local Ordinary as to government, administration, visitations, etc.

Those in charge of a papal community (Can. 488) are subject to the local Ordinary's supervision in all that pertains to the teaching of religion, good morals, religious exercises, and the administration of the sacraments; not in other things. (Trid., l. c., c. 8; Leo, Const. Conditæ a Christo § 2, n. x, Dec. 8, 1900; Blat, n. 400.)

2°. *Accounts.* The local Ordinary has also the right of exacting a rendition of accounts from all those institutions even from those who enjoy exemptions from his jurisdiction or visitation by the charter of foundation, prescription or apostolic privilege; the Code reprobates customs contrary to this rule, and, therefore abrogates even those which might have existed from time immemorial but not Apostolic privileges granted since the Council of Trent. (Can. 4, 5.)

Should a founder insist on stipulating that the administrator will not have to give an account of his administration to the local Ordinary, even though he might have to give one to other persons, the foundation should not be accepted and thus could not become an ecclesiastical institution. If accepted it would seem to hold as the law here has no annulling clause.

3°. *Fulfillment of Founders' Wishes.* (Can. 1493.) The local Ordinary must particularly see to it that the pious wishes of the faithful as expressed in the foundation charter of these institutions be fully carried out by the persons in

charge. (Trid., Sess. xxii, de Ref. c. 8; 2, iii, 11, in Clem.)

4°. *Supervision over Pious Institutes.* The above enactments concern ecclesiastical moral persons, but the local Ordinary has likewise some power over pious lay institutions. He may and must watch over them in what pertains to faith and morals to prevent abuses from creeping in or correct them. He has the same right of visiting lay institutions as the individual Christians (Can. 336, 344) and Canon Law makes him general executor of pious wills and testaments. (Can. 1515.)

310. 5. *Suppression, Union, or Transformation.* (Can. 494.) Unless otherwise stipulated in the charter of foundation the Holy See alone can authorize the suppression of these institutions once legally established, their union with some benefice, the seminary, etc., or the use of them for some other purpose than the one intended by the founders. The Council of Trent allowed Bishops to turn to other uses hospitals or similar institutions for which the need has ceased to exist in the place. (Sess. xxv, de Ref. 8.) The present law would require for this, permission from the Holy See, that is, the Congregation of the Council or of Religious.

PART VI

TEMPORAL POSSESSIONS OF THE CHURCH

(Can. 1495–1551.)

(Cavagnis, Institutiones Juris Publici Ecclesiastici, P. ii; Thomassin, P. iii; Wernz, iii, n. 133; Dictonnaire de Théologie Catholique, Biens Ecclésiastiques; Dictionnaire d'Archéologie Chrétienne et de Liturgie, Catacombes, Collegia; Catholic Encyclopædia, Property, ecclesiastical; Emile Lesne, Histoire de la Propriété ecclésiastique en France, T. I, Epoques Romaine et Mérovingienne; T. ii, Epoque Carolingienne, Lille, 1910, 1922; P. Fourneret, Les Biens d'Eglise après les Edits de pacification, Paris, Waltzer, 1902; Canoniste, Juillet 1920.)

In this last Part of the Third Book the Code deals with ecclesiastical property as one of the things which the Church must use to attain her end. After four preliminary canons it treats in four Titles of the acquisition of ecclesiastical property, of its administration, of the contracts of which it may be the object and of property entrusted to the Church in the form of pious foundations.

GENERAL PRINCIPLES AND DIVISIONS.

(Can. 1495–1498.)

I. RIGHT OF THE CHURCH TO OWN PROPERTY.

311. *Existence.* The Church as a visible society composed of men needs temporal posses-

sions for the exercise of external worship, the support of her minister and in general the fulfillment of her mission. She has, then, received from her Divine Founder the right of acquiring them, of holding and administering them, and all this independently of the civil power to which as a complete, perfect and spiritual organization she can not be subordinate.

Our Lord Himself and the Apostles had wherewith to provide for their needs and assist the poor (John xiii, 29) and in the Acts we see the first Christians selling their houses and lands and bringing the price to the Apostles who made distribution to everyone according as he had need. (iv, 34.)

During the first two centuries the Church probably possessed nothing more than the offerings of the faithful; Christians gathered for divine worship in private houses and the more fortunate members of the community shared their tomb with their poorer brethren.

In the third century and perhaps at the end of the second they commenced to form colleges which enjoyed the right of ownership as long as the law admitted them as licit. When the persecution broke out they were declared illicit and their property confiscated but after the restoration of peace some of it would at times be returned. After the Valerian persecution Emperor Gallienus gave back Christian cemeteries to the Bishops. (Eusebius, Ecclesiastical History, B. vii, c. 13; Duchesne, Histoire Ancienne de l'Eglise, i, p. 381–386; Dictionnaire d'Archéologie, Colleges; Lesne, i. p. 1.)

By the edict of Milan Christian colleges be-

came all licit and a special decree of the Emperor (321) gave them capacity to receive legacies which they did not possess by common law. In the course of the fifth century this legal personality with all its privileges was gradually extended to the Church as such and to various Christian institutions or moral bodies like parish churches, monasteries, the poor. (Lesne, i, p. 3; Canoniste, Juillet 1910, p. 387; A. Bondroit, De capacitate possidendi Ecclesiæ ætate Merovingica, p. 90, Louvain, 1908.)

312. From this moment the wealth of the Church increased rapidly through the generosity of the faithful, the liberality of princes and the disinterestedness of the clergy particularly of the higher clergy who generally belonged to important Roman families and left their estates to the Church at their death. In the days of St. John Chrysostom the church of Antioch could support three thousand poor.

These riches excited the cupidity of kings. The princes of the Carolingian family, Charles Martel and Charlemagne himself although in many respects favorably inclined towards the Church did not hesitate to dispose of ecclesiastical property almost as of their own in favor of their supporters. (Lesne ii, Les Etapes de la sécularisation des biens d'Eglise du VIII^{e} au X^{e} siècle.)

Under Louis the Pious Pontiffs and Councils obtained partial restitution but after him the work of secularization of Church property went on again and has continued for centuries under various forms and pretexts. To justify these practices Arnold of Brescia, the Waldenses, Wikliff denied the right of the Church to hold material

goods. Martin V condemned their errors in the Council of Constance (1418). In modern times regalists or socialists affirm the absolute supremacy of the State in these matters and the consequent dependence of the Church on its good will. Pius IX proscribed this theory as contrary to divine institution. (Syllabus, 1864.)

II. SUBJECT OF THE RIGHT OF OWNERSHIP.

313. 1. Not only the Catholic Church at large but also the Holy See, particular churches such as dioceses and in general all moral bodies duly endowed with juridical personality have the right of acquiring, holding, and administering temporal property, under the conditions and within the limits prescribed by the canons, for the pursuit of their own ends.

Holy See here includes the Roman Pontiff, Roman Congregations, Tribunals, and Offices.

Not all moral bodies enjoy this right of ownership but only those upon which it has been conferred with juridical personality either by law (Can. 531, 676) or by the superior who has authority to erect or approve them, that is, the Roman Pontiff or the local Ordinary. (Can. 686, 687.) In a diocese a parish may or may not possess it according to the mode of organization adopted for the tenure of ecclesiastical property.

These moral bodies retain their juridical personality only as long as they remain united to the centre from which they derive it.

In the following canons dealing with ecclesiastical property the term Church includes all these

juridical persons unless the context or the nature of the case demands a different interpretation. (Can. 1498.)

2. Ancient writers speak of Church possessions as belonging to God, to Christ, to the Saints, to the poor, to the Pope. This may indicate their ultimate purpose and sacred character, it can not designate the legal owner. The Code explicitly states as the best canonists had taught for some time that the title to ecclesiastical property is vested in the particular moral person that has legitimately acquired it under the supreme control of the Pope. (Can. 1499.) The Sovereign Pontiff enjoys the right not of strict ownership but of eminent domain over all ecclesiastical property; he may exercise general supervision over it, lay down rules for its administration, and even dispose of it in exceptional cases when the common good would demand it for grave causes of which he is the judge.

314. 3. Although canonically the title to ecclesiastical property be vested in the moral body or organization, the mode of tenure may vary chiefly to fulfil the requisites of the civil law.

Property may be held in fee simple when the holder becomes legal owner; in trust when he acts as the representative of the community; by corporation sole, one person, v. g. the Bishop forming a corporation in his official capacity and transmitting the property to his successor in office; by corporation aggregate, all the members of the moral body forming the juridical person and the property being vested in the body corporate.

The Third Plenary Council of Baltimore mentions three ways in which a Bishop may hold

diocesan property: by fee simple, in trust, and as a corporation sole. (n. 267.) In 1911 the Congregation of the Council ordered the discontinuation of the fee simple system as unsatisfactory. (Ecclesiastical Review, Nov. 1911, p. 583.) It tolerated with some cautions the system of corporation sole where the civil law would not allow another but expressed preference for the system of parish corporations and urged their introduction wherever possible, recommending, however, so to organize them as to preclude the danger of undue lay interference. They might consist of five members, the Bishop of the diocese, the Vicar General, the pastor of the parish and two lay trustees, the presence of four members being always necessary for any business transaction. No act should be valid without the Bishop's sanction.

III. RIGHT OF THE CHURCH TO DEMAND CONTRIBUTIONS. (Can. 1496.)

315. From the nature of the Church as a perfect, divinely instituted society follows her right to all she needs for the organization of divine worship, the support of her clergy and other ministers and the pursuit of her proper ends.

She may demand this of the faithful who become her subjects by baptism; it is for her to determine what form these contributions will take and how she will obtain them, in complete independence from any civil, or other, interference. All legitimately established societies may depend on their members for support and exact it from them.

IV. KINDS OF ECCLESIASTICAL PROPERTY. (Can. 1497.)

316. Civil and Canon Law divide property into corporeal or material such as houses, lands; and incorporeal such as moral rights, actions, obligations, stock;

Into movable or immovable according as it can easily be transferred from one place to another or is attached to a certain place either by its nature like a house or by its destination like decorations forming part of a hall or by law which declares them legally immovable.

Whatever its nature or destination, whether corporeal or incorporeal, movable or immovable, used for religious or profane purposes, any property becomes ecclesiastical and falls under canonical rule the moment, and as long as, it belongs to the Catholic Church, the Holy See, or any other moral body endowed with juridical personality in the Church; not property belonging, for example, to pious sodalities not formally erected by ecclesiastical authority such as the Conferences of St. Vincent de Paul. (A. A. S., 1921, p. 135.)

An object becomes sacred when dedicated to divine worship by consecration or blessing; mere use does not suffice; for example, the mere celebration of Holy Mass in a room even if often repeated does not render it sacred. A statue or cross blessed to serve for public devotions is a sacred object in the canonical sense of the term, not medals, crucifixes, etc. blessed only for private use although they should be treated with special reverence. (Can. 1154, 1284, 1296.) A sacred object is not necessarily ecclesiastical property,

for example, a consecrated chalice belonging to a lay person.

Canon Law has special provisions for objects which it calls precious and it considers as such those which have notable value either because of their intrinsic, commercial worth, or of their artistic merit or of their historical importance. Formerly canonists treated as precious from the first point of view objects worth about two hundred dollars or a thousand francs. Because of the depreciation of money in recent years some would raise this sum to three hundred dollars.

The gold standard should be followed here independently of the rate of exchange or of the fluctuations of the money market. (Vermeersch, n. 819.)

The artistic or historical value of an object depends on elements which skilled and wise men alone can properly appreciate.

TITLE XXVII

ACQUISITION OF ECCLESIASTICAL PROPERTY

(Can. 1499–1517.)

(Wernz, iii, n. 141; Vermeersch, n. 821; Ferreres, II, n. 472; Le Canoniste Contemporain, Jan. 1921–May 1922; Fourneret, o. c.; Lesne, o. c., i.)

GENERAL PRINCIPLE. (Can. 1499.)

317. The Church claims the right of acquiring property in the same manner as any other society or private person by all just means which natural or positive law sanctions. She would not take advantage of concessions made by civil power in defiance of the principles of justice, and neither does she feel bound by ordinances emanating from an authority inferior to hers and interfering with her prerogatives as an independent society. Ordinarily she conforms to the laws of the country, although not obliged to do so, as long as they do not unreasonably encroach upon religious ground as, for example, enactments restricting the freedom of pious bequests not unfrequently do.

Like individual citizens, then, the Church can acquire property by occupation, accession, pre-

scription, contracts, etc. Historically her temporal possessions owe their origin to various causes. The Code treats here of the principal ones on which she usually depends at the present time.

I. DIVISION AND ABSORPTION. (Can. 1500, 1501.)

318. 1. *Division.* The present law provides explicitly as equity demands that in the division of the territory belonging to an ecclesiastical moral person to give portion of it to another moral person or to erect it into a new one, the assets and liabilities should likewise be divided.

1°. This may occur in the division and in the dismemberment of parishes or dioceses and also in the division of canonically erected associations or confraternities with a distinct territory but not in that of moral persons without real territorial connection except that they must reside or have their headquarters in some place. Thus if some of the members of a society go and form a distinct and independent one there is no occasion for a division of property as long as neither has a special territory of its own. (Canoniste, Jan. 1921, p. 32.)

2°. The division does not affect the whole property but only that which is common or intended for the benefit of the whole territory, for example, for the poor or the sick or the schools of the diocese or parish. This does not include property given by a benefactor for a specific, particular purpose, for example, for the poor of a certain district or an individual school, nor does it include property located in the territory of the

original parish or diocese and serving a limited purpose, v. g. a cemetery; nor revenues local of their nature like tithes. (A. A. S., 1922, p. 129.)

Money already spent, for instance, for the erection or repair of the church is not subject to division as it no longer bears interest and does not partake of the nature of fruitful endowment.

The same rule governs the distribution of liabilities; only general ones or debts contracted for the benefit of the whole territory come up for division.

319. 3°. The superior who divides the territory has authority to divide the debts and property. The legislator directs him to proceed in this in accordance with the principles of equity, *ex bono et æquo,* if not with mathematical exactness which the matter does not permit and to allot to each part of the divided territory a share in the assets and liabilities proportioned to its importance and conditions. Thus if the new parish takes one third of the territory it would be entitled to about one third of the common funds but should assume one third of the general debt.

In all this care ought to be taken not to do anything that would directly or by way of consequence go against the will of founders or benefactors or deprive any person of acquired rights, for example, of the use or usufruct of some property. If the moral person in the case is governed by special laws they should be observed in the division.

4°. In a previous canon (1427 § 3) the legislator provides that in the division of parishes if the share of the common property going to the new benefice does not suffice for its proper en-

dowment, the Ordinary should, in the absence of other resources complete it out of the assets retained as its share by the mother church, without, however, depriving the latter of the necessary revenues.

This law concerns explicitly parishes, not associations or confraternities. It might apply, at least by way of analogy in the division of dioceses but the Code does not treat of this as it belongs to the Holy See.

320. 2. *Absorption.* (Can. 1501.) When an ecclesiastical moral person goes out of existence its property is absorbed by its immediate superior.

1°. Moral persons are of their nature perpetual; they may, however, lose their legal entity in two ways: by a decree of suppression or dissolution emanating from legitimate authority and by cessation of activity or actual existence for one hundred years. (Can. 102.) During this time the administration of the property naturally devolves on the immediate superior who at the end of it has only to declare the person extinct.

In case of suppression the superior who pronounces it ordinarily attends to the transfer of the property.

After both dissolution and natural extinction the one in charge of the liquidation must see whether the rules or constitutions of the extinct moral person make any provision for the distribution of property in such an emergency. If they do he strictly conforms to their directions as a sort of expression of last will.

He must find out, besides, desires possibly ex-

pressed or conditions laid down by benefactors or founders in regard to the portion of the endowment contributed by them and these too he should religiously carry out.

What remains for free disposal goes to the moral ecclesiastical person immediately above the extinct one but it goes with all its burdens and obligations such as Masses to be said, pension to be paid, etc. so that the transfer may injure no one's acquired rights.

2°. The property of a moral person belonging to an organized body with a well defined hierarchy will thus go to the other moral person on which it depended as its immediate superior, v. g., that of a particular religious house to the province, that of the province to the order.

If the person does not form part of a strictly hierarchical organization its immediate superior will be the moral body under, or within, which it existed; hence the property of a parochial association will go to the parish, that of a confraternity diocesan in character to the diocese. Ecclesiastical moral persons that depend on no other have the Holy See as their immediate superior.

The territory of a suppressed parish ordinarily becomes part of another and its property goes with it.

II. FIRST FRUITS AND TITHES. (Can. 1502.)

321. The Mosaic Law prescribed the offering to God and to His ministers of the first fruits and the tenth part or tithes of certain revenues. (Ex.

xii, 29; Lev. xxvii, 30; Num. xviii, 19; Deuter. xiv, 22.)

1. This legislation did not continue in force under the New Convenant but the first Christians out of gratitude to God retained the practice of bringing the first fruits of the land to His representatives the Apostles or Prophets and afterwards the Bishops. (Teaching of the Twelve, xiii, 3.) By custom and particular law this became obligatory later on in some places particuarly in the Orient but it has long since fallen into desuetude except in a few churches which may have maintained the ancient discipline by local statutes. (Wernz, iii, 221; iii, Tuam Council, 1858, c. xviii, 1; Fourneret, p. 28.)

2. In the Apostolic Church the faithful contributed generously to the support of religion without need of any ecclesiastical legislation to compel them to do so. When in the third century their liberality began to decline prelates had to remind them of their obligation and they referred to the Old Testament for argument, example, and a positive, practical rule. At first they merely exhorted the people to do their duty and show at least as much generosity as was expected from the Israelites. Gradually they adopted the system of tithes as the regular mode of ecclesiastical taxation. Although introduced at an earlier date in various parts of the Church (Tours, 567; Macon, 585, 5; Rouen, 650, 3) it did not become obligatory by general law before the eighth or ninth century when civil rulers also helped to enforce it. A detailed legislation determined the revenues liable to tithing, the proportion due, the

persons entitled to it. For several centuries tithes formed one of the principal sources of income for churches and clergy. Laymen often usurped them; at times it proved difficult to collect them and they gave rise to not a few controversies and to complaints. The Revolution at the end of the eighteenth century abolished them in many places but they survived in others as in Germany, Canada. In California the synod of 1852 decreed their suppression and the substitution of something else in their place. (Wernz, iii, 210; Thomassin, P. iii, L. i, c. 4, 72; L. 2, c. 58; P. Viard, Histoire de la dime ecclésiastique Dijon, Jodard, 1909, 1911; Fourneret, l. c., p. 28; Lesne, l. c., p. 15, 186; Gagnol, La Dime ecclésiastique en France au XVIII[e] siècle, Paris, 1910; Canoniste Contemporain, Nov. 1911, p. 647; 1913, p. 23, 77; 1921, p. 116.)

In regard to both tithes and first fruits the present law leaves existing conditions unchanged and commands respect for the particular law and legitimate customs of each region.

III. COLLECTIONS FOR PIOUS PURPOSES. (Can. 1503.)

322. 1. All institutions and moral bodies have the right except for some disposition to the contrary in their statutes to accept offerings made to them spontaneously without soliciting on their part.

2. Those who hold a public office in the Church may, within the limits of their territory, invite contributions for the support and development of works entrusted to them. Authority for this subject to proper control is implied in appointment to the office. The Code explicitly grants it

to parish priests even to those who belong to religious orders. (Can. 415 § 2, 5; 630 § 4.)

3. But ecclesiastical law forbids private persons, whether clerics or laymen, to collect funds for any pious or ecclesiastical institute or purpose without written permission from the Holy See or from the Ordinary of the collector and of the place in which he collects.

(*a*) The permission must be given in writing and come either from the Holy See or from the local Ordinary. The Apostolic See can authorize collections in all parts of the Church independently of the local Ordinary's consent but the rescript must be presented to the latter as demanded by canonical rule (Can. 51) and by proper regard for legitimate superiors.

If the collector has not received permission from the Holy See he must obtain it from both his own Ordinary and the Ordinaries of the places in which he wishes to collect. He does not strictly speaking need authorization from parish priests but courtesy would suggest an understanding with them.

(*b*) This permission is needed by all persons acting in a private capacity without official warrant or mission. Outside of their territory pastors and even Bishops can act only in a private capacity.

323. (*c*) Collecting implies soliciting from a fairly large number of people (Blat, n. 415) not simply, for instance, asking for a donation from two or three wealthy friends (Prummer, 445, Vermeersch, n. 823.)

As the law makes no distinctions and is clearly intended to protect the faithful against indiscreet

and at times dishonest, solicitors, some canonists interpret it in a strict sense and extend its provisions to all forms of soliciting, whether by personal interview or by correspondence, circulars, appeals in periodicals, etc., selling tickets in another's parish, etc.

Others consider as technically coming under the law only personal collecting which may more readily become indiscreet and importune, not, for example written pleas describing the needs of a good work and inviting contributions; it would seem difficult when sending a circular to secure beforehand the permission of all the Ordinaries whose territory the document may enter. Approval by the sender's Ordinary would appear sufficient. (Vermeersch, l. c.)

(*d*) The Code gives elsewhere (Can. 621–634) the rules which concern mendicant religious and those which govern in this matter pious associations (Can. 691).

(*e*) The product of collections must always be used according to the intentions of the contributors. Offerings made without indication of purpose belong to the parish in which they were made.

IV. CONTRIBUTIONS PRESCRIBED BY ORDINARIES.

(Can. 1504–1506.)

329. Ancient Councils authorize Bishops to demand from their clergy and churches the necessary contributions warning them at the same time not to exceed the limits set by law. (III, Lateran, 1179, Can. 7; 6, x, iii, 39; Trent, Sess. xxiv, de Ref. c. 3.) As permitted they mention the

cathedraticum, a tribute paid to the Bishop in token of respect, the *caritativum* intended to meet extraordinary needs, the procurations to defray the expenses of the diocesan visitation, the *seminaristicum* for the support of the seminary, the *quarta canonica* or portion of funeral fees, pious bequests, or titles and pensions.

The *quarta canonica* has long gone into disuse; the Code has treated already of procurations (Can. 346), of the *seminaristicum* (Can. 1355, 1356) and of beneficial pensions. (Can. 1429.) Here it deals with the *cathedraticum,* extraordinary subsidies, and some special contributions. (Wernz, iii, n. 223; Thomassin, P. iii, L. ii, c. 32–37; Nouvelle Revue Théologique, 1921, p. 195, 225; Canoniste, Mai 1921, p. 206.)

325. 1. *Cathedraticum.* (Thomassin, l. c., c. 34; Benedict XIV, De Synodo, L. v, c. 6, 7.) 1°. In the sixth century as we know from the Council of Braga (572) the custom already existed at least in some countries, for each church to pay a certain sum fixed at two *solidi* to the Bishop of the diocese as a token of subjection and respect. Subsequent Councils often refer to the right of Ordinaries to this tribute called *cathedraticum* because paid to the first or cathedral church of the diocese, and also *synodicum* because it was usually collected on the occasion of the diocesan synod; the rate remains two *solidi* and Bishops are admonished not to demand more (Toledo, 646; Chalons, 813; Toulouse, 844; 1, 4, 8, C. x, q. 3; 9, 20, X, iii, 39) but as the value of the *solidum* varied in different countries local custom determined the amount of the contribution. The Provincial Council of Rome held in

1725 considered two *solidi* as equivalent to twenty *julii* or about two dollars, although some say two shillings, and it fixed the amount for the *cathedraticum* at fifteen or ten *julii* according to the resources of churches. (Collectio Lacencis, I, 358.)

In modern times the *cathedraticum* has gone into disuse in many churches but some have retained it, in Italy, in South America (Plen. Coun., 1899, n. 860), in Bavaria, and in Prussia. In England shortly after the restoration of the hierarchy the Bishops took steps to have the *cathedraticum* introduced again; several Ordinaries fixed it at one pound for each taxable clergyman but this having proved too heavy in some places, for the sake of uniformity the Westminster Council of 1859 reduced it to half a pound for all.

The tax levied by Bishops in the United States on parochial revenues although often designated by the same term differs essentially from the *cathedraticum* and the Baltimore Councils do not give it that name. (VIII Prov. Balt. 1855, vii; II Plen. Balt. 1866, n. 99.)

326. 2°. The Code maintains the *cathedraticum* and defines it as a moderate tax which all churches and benefices subject to the Bishop's jurisdiction and also lay confraternities ought to pay annually to the Bishop in recognition of his authority according to the rate determined by the Provincial Council or ancient custom.

(*a*) This tribute remains as it has always been rather honorific than useful and without strictly fiscal character; although helping towards the support of the Ordinary this is not its primary purpose.

(*b*) Under the present law, which on this point differs in some respects from the ancient one, it has to be paid by all churches even though not parochial (Can. 479), by public oratories which follow the same rule as churches (Can. 1191), by benefices subject to the Bishop and by lay confraternities, not by beneficiaries out of their own revenues.

Exempt benefices and churches serving exclusively for exempt religious do not pay it; but secular benefices or churches which serve for non-exempt persons come under the general law even when in care of exempt religious.

By confraternities we must understand here not all pious unions or sodalities but only associations formally erected into organized bodies with a moral personality for the furtherance of public worship. (Can. 707, 708.)

327. (*c*) The *cathedraticum* should be moderate and, according to ancient practice, uniform, the same or nearly so for all that pay it in the diocese, not proportionate to their revenues like a fiscal exaction.

In 1920 the Congregation of Council refused approval to a plan proposed by some Bishops for the introduction of the *cathedraticum* in their dioceses under the form of a tax which parishes and confraternities would pay in proportion to the number of their members *viz.* two dollars for 500 members or parishioners, four for 1000, etc. It was objected that even at this low rate in large parishes the amount would exceed the limits of moderation prescribed and traditional, that the *cathedraticum* under that system would lose its essentially honorific character and partake of the

nature of a fiscal exaction thus not corresponding to the ancient canonical concept. If necessary to levy a tax it should be different from the *cathedraticum*. (A. A. S. 1920, p. 445; Nouvelle Revue Théologique, l. c., p. 199.)

The common law does not fix any amount; this should be done for the whole province in a Provincial Council or in a meeting of the Bishops of the province, but their decision has no authority till it has received the approbation of the Holy See ordinarily through the Congregation of Council. The Code recognizes, however, the value of long existing customs in this matter.

328. 2. *Extraordinary Subsidies or Subsidium Caritativum.* (Can. 1505.) 1°. The Third Lateran Council (1179, Can. 4) after strictly forbidding Bishops to overburden their subjects with taxes and exactions allows them in cases of special necessity for manifest and reasonable causes to ask with all charity for moderate assistance. Honorius III referring to this decree a few years after (1208) in a letter to a Bishop admonishes him not to demand from a certain monastery other contributions than the ones sanctioned by law and in urgent necessity the moderate assistance permitted by the Council. (16, X, I, 30.)

Bishops apparently did not often take advantage of this concession perhaps because it supposed conditions rarely fulfilled in the days of large benefices and usually interpreted by Congregations in a strict sense for the protection of the lower clergy. Canonists gave as examples of causes for its use the necessity of paying for ex-

penses connected with the Bishop's promotion, confirmation, or consecration, with the visit *ad limina* or works undertaken for the protection and promotion of diocesan interests.

Some authors would consider as forms of the *caritativum* taxes levied in modern times by some Bishops to meet special needs. Thus the Council of Quito (1869) imposes on all parish priests a semi-annual tax of at least four *reals* and not more than three *pesos* for the support of the Indian missions (Collectio Lacensis, vii, c. 437); the Plenary Council of Baltimore (1884, n. 71) directs Bishops to tax parishes annually and if necessary all priests for the constitution of a clerical relief fund. But these are regular, not extraordinary, contributions.

2°. The Code admits the *subsidium caritativum* on essentially the same conditions as the ancient law.

Only a grave, urgent diocesan need of an extraordinary and accidental character can justify it. The assistance demanded must, then, be a temporary, not a regular, periodical one.

It must also be moderate, that is, proportioned to the resources of the subjects and to the needs of the superior.

This subsidy is paid, not like the *cathedraticum,* by the benefices or moral persons but by the beneficiaries whether secular or religious out of their own income, understanding by this only their strictly beneficial revenues in the sense explained above. (Can. 1410, 1473.)

329. 3. *Contributions Stipulated in the Foundation.* (Can. 1506.) Under the present as un-

der the former discipline on the occasion of the foundation of benefices or other ecclesiastical institutes and of the consecration of churches the Ordinary may, if their endowment permits, impose upon them a regular tribute in favor of the diocese or of the patron. Thus when establishing a parish he might stipulate that it will have to pay annually a certain sum or a percentage of the beneficial revenues to the diocese towards the support, for example, of the seminary. But this must be done in the act of the foundation or consecration; afterwards the Ordinary may not even in the case of benefices entirely under his authority impose on them new periodical contributions outside of those mentioned above (Can. 1504, 1505) nor increase the ones already established. The Lateran Council added an annulling clause to this provision (7, X, III, 39) and, no doubt, the present law has the same meaning and the same efficacy. As said before, however, should the patron become reduced to poverty without his fault the benefice would have to support him. (Can. 1455.)

As explicitly stated in the Code, on funds destined for the celebration of Masses or on stipends for either manual or foundation Masses no tax or contribution can be imposed at any time or under any condition.

330. 4. *Other Contributions.* 1°. Although the ancient canons repeatedly warn Bishops not to impose other tributes than the ones approved by law, in modern times, chiefly in countries where the Church possessed no benefices, Bishops, with the tacit or express approval of the Holy See, often had recourse to various exactions to obtain

the resources they needed for themselves and for their work.

The VIIIth Provincial Council of Baltimore (1855, vii) decreed that since the Bishop had a right to proper support from his people he might levy a tax on all the revenues of the quasi-parishes of his diocese, pew rents, plate collections, fees for baptisms and marriages, etc., the rate to be determined in synod but not to exceed ten per cent of the income.

The First Provincial Council of Cincinnati (1855, x) having asked the Holy See for a uniform rule in this matter, the Propaganda preferred to leave this for the synod to regulate, only recognizing again the Bishop's right to a support.

The Second Plenary Council of Baltimore (1866, n. 99) substantially renewed the provision of the Provincial Council of 1855.

The Council of Halifax (1857, xix, 9) ordered a collection to be taken up in October every year in all the parishes for the Bishop of the diocese.

In 1852 the Propaganda had authorized the Bishops of the province of Quebec to levy a tax of ten per cent on the revenues of their parishes and missions till the Holy See would provide otherwise. (Collectio Lacensis, VI, c. 621; cf. c. 153a, 162b, 196b, 202b, 755c, 1078c.)

The legitimacy of these practices thus approved in a positive or at least negative manner by Rome could not well be questioned even though they seem to involve a departure from the common law. (Wernz, 223.)

But as the Code contains no mention of them

and reproves again all taxes not permitted by law some canonists have concluded that it had notably restricted the powers enjoyed by Bishops in this matter or withdrawn concessions made to them in some countries. (Vermeersch, n. 826.)

It could hardly be, however, the intention of the legislator to make such a change, abrogate a particular legislation called for by conditions still continuing and taking away from Ordinaries the means of getting the necessary resources without substituting anything in its place.

In reality the contributions here under consideration do not come under the prescriptions of the canons in this Title. They rather pertain to what concerns the organization of benefices under the present law as they constitute the endowment of the episcopal benefice in accordance with the modern concept. (Can. 1410.) When ancient canons and the Code in this Title treat of tributes paid to the Bishop they presuppose the existence of an endowment or assured income which they do not permit to increase by other taxes than the ones which have the sanction of law.

V. TAXES OR FEES FOR VARIOUS ADMINISTRATIVE ACTS. (Can. 1507.)

331. 1. Exactions connected with the dispensation of spiritual things have given occasion to many complaints and to not a few abuses. The Church would much prefer if possible to do without them and give freely what she has received freely in accordance with the evangelical precept

(Matt., X, 8); numerous decrees of Popes and Councils prove this.

As early as the end of the third or the beginning of the fourth century the synod of Elvira enacts a decree forbidding the faithful to make an offering at their baptism lest the minister would seem to sell sacred things. (Can. 48.) Other Councils extended the rule to the sacraments of confirmation, penance, orders, the Holy Eucharist; to funerals, preaching etc. Often they simply forbade the clergy to exact anything without obliging them to refuse voluntary oblations or condemning the faithful who made them. The devotion of the people maintained the practice, no doubt with the encouragement of ecclesiastics prompted in this, at times, by cupidity and often by poverty.

Thus gradually offerings entirely free in the beginning became by custom obligatory. Hence Innocent III in the Lateran Council of 1215 (Can. 4) whilst reproving ecclesiastics who extort money for funerals, marriages, etc. and when a sufficient offering is not forthcoming object fictitious impediments, condemns also lay persons who under the pretext of regard for canonical law but animated by a heretical spirit try to break up laudable customs introduced by Christian piety and devotion to the Church. The sacraments ought to be administered freely but the faithful ought to conform to the praiseworthy custom of making an offering on that occasion and Bishops ought, if necessary, to compel them to do so. The ministers themselves now legitimately demanded these offerings as their due but only

within the limits prescribed by custom or by law. Henceforth Councils and Roman Congregations strive to define these limits and to correct abuses that from time to time creep in. (Trent. Sess. xxi, de Ref. c. 1; Sens, 1528, Can. 2; Narbonne, 1551, Can. 41; Aix, 1575; Lateran, 1679, Can. 7; Thomassin, P. iii, L. i, c. 55–75; Bingham, Book v, c. iv.)

In 1678 Pope Innocent XI issued a decree known as *Taxa Innocentiana* regulating the fees for the various acts, instruments, or writings expedited from an episcopal chancery. Further instructions were added by the Congregation of the Council. (June 10, 1896, A. S. S. vol. xxix, p. 433.) These rulings no longer bind but they may still furnish practical indications as to what the Holy See will likely approve.

332. 2. The enactments of the Code on this subject embody substantially the former discipline; they aim at so regulating the matter as to prevent abuses if possible and eliminate dangerous or unbecoming practices without abrogating legitimate customs and adopting any extreme measures.

(*a*) As provided before (Can. 1056) for the concession of marriage dispensations, except with permission from the Holy See, local Ordinaries or their officials can exact no other compensation than a small offering for chancery expenses and even this they should not demand from the poor. All contrary customs are abrogated and the obligation of restitution imposed on those who would go against these prescriptions. (Marriage Legislation, n. 107.)

(*b*) A canon explained above (Can. 1234)

empowers local Ordinaries, each one for his own territory, with the advice of the diocesan consultors and if opportune the co-operation of rural deans and pastors of the episcopal city, to draw up a list of funeral fees if none such exists already. In this they should take into account legitimate particular customs as well as all circumstances of persons and places, determine with moderation each one's rights according to the cases, remove all occasions of dispute and scandal and when the list has several classes of funerals leave each one free to choose the one preferred.

333. (*c*) Stipends for the various acts of voluntary jurisdiction, the execution of Apostolic Rescripts and the administration of sacraments or sacramentals should be fixed for the whole ecclesiastical province by the Provincial Council or a meeting of the Bishops of the province. Their regulations, however, need for their validity, approval from the Holy See.

The Code opposes voluntary to judicial jurisdiction (Can. 201 § 3) the latter requiring for its exercise a regular trial with the formalities described in the Book on Judgments, the former calling at most for some legal forms but no strictly judicial proceedings; administrative removal of pastors, concessions of favors, dispensations from impediments, appointments to benefices, admission to orders, delegation of jurisdiction represent exercise of voluntary jurisdiction.

The Holy See grants some rescripts in the gracious, others in the commissory, manner. The former obtain their effect from the moment of concession without the intervention of an execu-

tor, the latter require such intervention for their efficacy. (Can. 51–59.)

The law of the Church forbids ecclesiastics to demand or exact anything directly or indirectly for the administration of the sacraments under any pretext; it makes an exception only for those offerings which have the approval of the legitimate authority.

The fee for the acts mentioned above or the offering made on the occasion of the administration and reception of sacraments does not represent their price; it is rather a contribution to the support of the clergy and sometimes a compensation for labor and for expenses incurred, but although legitimate in itself the Church wishes to regulate it very strictly lest it should give occasion to abuses or misunderstandings.

In this matter the fees or stipends are not fixed by the Ordinary for the diocese but by the Bishops of the province for the whole territory under their jurisdiction; this no doubt for the sake of greater uniformity more easily obtainable here than as regards funerals and in order to avoid differences between one diocese and another which the faithful do not understand.

The Bishops should prepare that schedule of taxes in a council or an informal meeting and obtain confirmation of it by the Holy See through the Congregation of the Council. Till then it remains ineffective and no one may legitimately take advantage of it. The Holy See wishes to exercise close supervision over these matters because of their delicate nature and to lend the support of its authority to measures taken by local Ordinaries.

Upon legal approval the schedule becomes binding on all in the province. One exacting higher fees or stipends would incur the guilt of injustice with obligation to restitution and liability to other punishments, pecuniary fines, and even removal from office. (Can. 2408.)

(*d*) The Provincial Council or meeting of the Bishops must likewise establish the charges for judicial proceedings and fix the fees for lawyers and procurators, for translations and copies of documents, for examination and verification of the same, and certificates from the archives. (Can. 1909.) But here the law does not demand that they submit their rulings to the Holy See for approval. (Canoniste, Juillet 1921, p. 307–320.)

VI. PRESCRIPTION. (Can. 1508–1512.)

(Wernz, iii, n. 292; Vermeersch, n. 828; Canoniste, Juillet, Septembre 1921.)

334. 1. *Nature and Kinds.* Canonists define prescription as a method introduced by positive law for acquiring ownership or ridding oneself of burdens by prolonged possession or non-fulfillment of obligations under certain conditions. Prescription may be acquisitive or liberating, ordinary or extraordinary.

The mere fact of possession could not of itself create a right, nor non-fulfillment of an obligation extinguish it but positive law, civil or ecclesiastical, imparts to them that efficacy for the sake of the common good, to give security of title to property and remove many causes for litigation.

2. *Conditions.* They pertain to the object of

prescription, mode of possession, duration. In ecclesiastical matters prescription derives its value from ecclesiastical legislation which determines also its conditions.

Ancient Canon Law had adopted in this matter the provisions of Roman Law with a few additions or modifications. The Code states here that it accepts those of the respective nations except on a few points for which it lays down its special rules.

In the absence, then, of any special provisions in the Code everyone will have, even in ecclesiastical matters, to consult the civil law of his own country and state as to the conditions for, and effects of, prescription in a particular case. The English law and the particular statutes of many states in America distinguish between prescription proper which transfers property or extinguishes obligations and mere limitation of action which leaving rights and obligations intact simply withdraws legal support.

335. 3. *Special Canonical Provisions.* 1°. *Objects not Subject to Prescription.* Canon Law excludes the following objects from the scope of prescription:

(*a*) Rights and duties of the natural or divine positive law. Prescription can not affect the rights of parents over their children, the prerogatives of the Roman Primacy, the essential constitution of the Church;

(*b*) Privileges obtainable only from the Holy See, powers whether of order, jurisdiction, or administration belonging exclusively or reserved to the Pope. A priest could not by prescription acquire the right of administering Confirmation.

(*c*) In the case of laymen spiritual rights of which they are incapable. They can not acquire by prescription any power of orders or spiritual jurisdiction, for example, the right of appointment to ecclesiastical offices; they can acquire rights which are not spiritual like the right of burial in a certain place, precedence, ownership, etc.

(*d*) Well-established and undisputed boundaries of ecclesiastical provinces, dioceses, parishes, vicariates apostolic, prefectures apostolic, abbacies, prelacies *nullius*. Prescription might have its effect if the original division lacked definiteness or there existed some serious doubt concerning the boundaries.

(*e*) Mass stipends and obligations. Prescription can not extinguish the right of a priest to the stipends for Masses he has celebrated nor the obligation of celebrating Masses resulting from acceptance of stipends or some other onerous contract. Prescription might transfer the obligation, for example, from one member of a chapter to another.

(*f*) Ecclesiastical benefices obtained without any title. As said before (Can. 1446) peaceful possession of a benefice for three years, in good faith, with a title although invalid, suffices for its acquisition by prescription but without title or with a title vitiated by simony the longest possession remains ineffective.

(*g*) The right of visitation or obedience as such. A parish, district, or religious house might by prescription pass from one jurisdiction to another, but they may not free themselves from all control in such a manner that no prelate would have the right to visit them and that they would

owe obedience to none. All in the Church must depend on a superior, the Pope alone excepted.

(*h*) Payment of the *Cathedraticum*. Even if the Bishops of a diocese have not demanded any cathedraticum for many years the present incumbent retains his right to it and may claim it if he wishes.

(*i*) Sacred things dedicated to divine service by blessing or consecration. (Can. 1510.) If they are the property of an ecclesiastical moral person, for example, chalices belonging to a church, private or lay persons can not acquire them by prescription but only other ecclesiastical moral persons, another church, a religious community, etc.

If they are the property of private persons as, although sacred a chalice, for example, may be, other private persons may acquire them by prescription but they should not use them for profane purposes as long as they remain sacred. Once they have lost their blessing or consecration they may be used for profane but not unbecoming or sordid purposes.

336. 2°. *Time Required.* (Can. 1511.) It varies with the different objects and the legislations of various countries. Usually they demand more for immovable than for movable property. In America many of the states exact twenty years for immovable, some forty (Maine), others only seven or five (California). This, however, may refer only to limitation of action not to prescription proper.

The present canonical law, modifying the former discipline in some respects and simplifying it, requires for prescription of immovables, precious

movables, rights and actions, real or personal, a hundred years if they belong to the Holy See and thirty if they belong to another moral ecclesiastical person.

(*a*) As the Code does not mention here ordinary movables not considered as precious in the sense explained above (Can. 1497 § 2; cf. Can. 1532) they must come under the common provisions of the civil law, even when they belong to the Holy See or to some other ecclesiastical person.

(*b*) The privilege of the Holy See does not extend to institutes or orders placed under its special protection or immediate jurisdiction unless they have it by special concession whether anterior or posterior to the Code.

Nor does that of moral ecclesiastical persons cover the property of pious associations which have no legal personality in the Church.

(*c*) The Code here clearly means to protect ecclesiastical property not to limit the rights of ecclesiastics and the Holy See or ecclesiastical moral persons remain able to prescribe against private or lay persons on the same conditions as ordinary citizens.

(*d*) No doubt, the principle still holds that prescription does not run against a moral person deprived of its legitimate protector and that in the case of invalid alienation it does not begin till after the death of the administrator responsible for it.

(*e*) Regularly the time should be continuous and the possession peaceful. Some causes, for example, vacancy of the see in prescription against a diocese, merely suspend the prescription which

will continue again after removal of the obstacle; others, for example, cessation of good faith or of peaceable possession, interrupt it so that it has to start over again.

337. 3°. *Good Faith.* (Can. 1512.) Generally the civil legislator does not require good faith in the possessor for prescription, not necessarily that he undervalues it or intends to encourage fraud and injustice, but his action reaches with difficulty the domain of conscience, he aims directly at maintaining external order and removing causes of litigation on the ground of bad faith.

The Church even in her activity in the external forum has always in view the salvation of souls; she can more readily appeal to conscience and must adhere closely to the principles of the moral law which does not permit anyone to benefit by his injustice. Hence the rule formulated by Alexander III, repeated by Innocent III, Boniface VIII, and others (5, 20, x, ii, 26; De Reg. Juris, in VIo) and now embodied in the Code: no prescription is valid without good faith from the beginning to the end of the time required for it.

(*a*) Good faith implies in the beneficiary honest conviction excluding all prudent doubt that the property in his possession really belongs to him. This supposes an error of fact or right which ordinarily originates in a title apparently legitimate but in fact invalid. The Code explicitly requires a title for prescription only in beneficial matters, but the necessity of good faith involves almost in all cases the need of a title.

(*b*) Good faith must exist not only in the beginning but during the whole process of prescrip-

tion. Should it cease only for a moment, this would suffice to vitiate all that preceded. A serious doubt before prescription begins excludes good faith; arising after, it has no effect as long as after proper investigation it remains a mere doubt.

(*c*) The successor in the possession of property benefits by the good faith of the predecessor; he suffers the effects of his bad faith unless he begins a juridically new and independent possession.

(*d*) These principles apply directly to acquisitive prescription which supposes possession. In liberating prescription good faith as far as it is required will generally consist in abstaining in the process from anything unjust. The one who profits by it may adopt a passive attitude. He does not have to warn the other party, for example, that he will lose the right to pasture, to fish, to water, unless he uses it, as long as no illegitimate obstacle is placed to the exercise of the right.

VII. PIOUS DONATIONS AND BEQUESTS.

(Can. 1513–1517.)

(Wernz, iii, n. 274–291; Sebastianelli, Prælectiones Juris Canonici, De Rebus, Romæ, 1905, P. iii, c. i, iv; Canoniste, Jan. 1922, p. 14; Thomassin, P. iii, L. i, c. 16–25.)

338. 1. *Legitimacy and Formalities.* 1°. Some heretics questioned the lawfulness and validity of donations made to pious institutions. Wiclif pronounced it sinful to found convents and contrary to the teaching of Christ to bequeath money to the clergy. Martin V condemned his errors by

the Bull *Inter cunctas,* Feb. 22, 1418. Legists in modern times have denied the independent right of ecclesiastical persons to receive donations or tried to limit it in various ways. This the Church has reproved also as an infringement upon her prerogatives. (Pius IX, Quanta Cura, Dec. 8, 1864.)

She claims and has always maintained that any person able and free by natural and canonical law to dispose of his property can, if he wishes, validly and lawfully give it to pious causes either by simple donation which gratuitously transfers ownership irrevocably and immediately upon acceptation, or by donation *causa mortis* which remains revocable during the life time of the donor, or by last will which becomes effective at the death of the testator.

By natural law all persons with sufficient use of their faculties have the right to dispose of what they own.

Human legislators can, when the common good demands, restrict the use of this right, establish disabilities and forbid, for example, minors or married women to bequeath property. The State enjoys this power over civil contracts but the Church alone has authority to regulate those which have a religious character by reason of their object or purpose, such as donations or testaments in favor of pious causes that is of religion or Christian virtue. For these the Code demands only the qualifications required by natural or canonical law.

339. 2°. *Formalities.* Natural and canonical law prescribe no special formalities for the lawfulness or validity of donations or testaments, only

that the real will of the donor or testator be known and proved with moral certainty as by a written document, the testimony of two or three reliable witnesses or even one of unimpeachable authority.

Often the civil law makes the lawfulness and even validity of donations or bequests depend on a certain form. Will those enactments affect testaments in favor of pious causes ?

Some ancient canonists or theologians answered in the affirmative on the ground that the Church had adopted, in these matters or canonized, the provisions of the Roman Law and by way of consequence those of modern legislations. (D'Annibale, Summula Theologiæ Moralis, P. iii, n. 70.)

The great majority of them, however, rejected this theory as based on no solid foundation and positively contradicted by a decretal of Honorius III (10, x, iii, 26) and several decisions of the Holy Penitentiary. (Jan. 10, 1901.)

The Code clearly supports this latter view although in cautious terms. The first draft of the canon on the subject contained a direct and explicit affirmation of the validity of pious donations and testaments independently of civil formalities. In the text finally adopted the legislator recommends, as a measure of prudence, faithful compliance in bequests to pious causes, with the requirements of the civil law but in case of omission he directs those whom it concerns to urge none the less on the heirs the carrying out of the testator's will, which supposes the efficacy of this will and the transfer of property rights in spite of neglect of legal formalities. This is not stated explicitly through regard for the civil legislator

and also perhaps in order not to disturb without any profit the possible good faith of some heirs who in certain cases with an appearance of foundation may interpret the absence of last will drawn up in proper form as evidence of lack of firm intention of really leaving property to pious causes.

With them the wording of the canon does not suggest use of positive orders, or compulsory measures or recourse to the ecclesiastical court but rather of warnings and exhortations and appeals to conscience. If they consult the Holy Penitentiary in all probability it will, according to ancient practice, ask them to carry out the intentions of the testator but may admit them to composition.

Necessary heirs may always claim the portion to which they are entitled by law, even against pious causes as commonly admitted.

340. 2. *Execution of Donations and Last Wills.* (Can. 1514.) 1°. Benefactors may donate or bequeath property to the Church or pious works absolutely leaving the use of it to their discretion, or they may give for a specific purpose and with certain conditions; and this also in two ways either placing the property in trust, in the hands of a physical or moral person who must devote it to a definite work like the building of a church, buying a statue, making distributions to the poor, etc.; or establishing a fund or capital the income from which will serve permanently, for example, for the support of a school, the education of a cleric, the celebration of a certain number of Masses every year.

The Code treats in particular of pious founda-

tions a little further on (Can. 1544–1551), here it lays down general rules which apply both to them and to pious trusts.

2°. The first and sacred rule is strictly to carry out the intentions of donors in all their details in regard both to the administration and the distribution of the property as long as nothing is demanded contrary to natural or canonical law and all remains under the control of the Ordinary.

341. 3. *Rights and Duties of Ordinaries.* (Can. 1515.) 1°. The law itself appoints Ordinaries, that is, Bishops or superiors in religious orders, supreme executors of all pious donations and bequests. Councils and the Roman Congregations have often affirmed their rights and responsibilities in this matter. (3, x, iii, 25; Trent, Sess. xxii, de Ref. c. 8; S. C. C. July 27, 1907; Aug. 7, 1909; Canoniste, 1907, p. 687; 1910, p. 52.)

2°. They do not have to, nor should they, take into their hands the execution of all pious gifts but they have mission to watch over those appointed for this purpose and see that they discharge their duty faithfully. They may, and if necessary should, inquire about this in formal visitations and executors who act under their supervision must give them an account of their stewardship.

3°. Any provision in a will or donation contrary to these enactments should be considered as of no effect.

342. 4. *Clerics and Religious as Trustees and Executors.* (Can. 1516.) 1°. Whenever a cleric or religious receives in trust a donation or bequest for pious purposes the law demands that he notify the Ordinary and indicate in detail the

property movable or immovable entrusted to him with the obligations attached to it. This rule applies to all gifts of some importance, actions, stocks, money for the repair of the church, the purchase of sacred vessels, the relief of the poor, etc., and so much importance is set on it that if the donor would explicitly and absolutely forbid compliance with it the cleric or religious could not accept the mandate.

The ancient law imposed also on laymen this obligation of notifying the Ordinary. (S. C. C., Aug. 7, 1907.) At present it will strictly speaking suffice that they submit to his visitation and give him an account of their administration.

Religious may, as this Canon implies, accept these mandates with permission from their superiors. Franciscans of strict observance need permission from the Pope and Jesuits from their General. (Wernz, n. 283.)

343. 2°. The Ordinary must oblige trustees to take proper care of the property committed to them and to provide for its security against danger of loss or deterioration. He must also as said before watch over the faithful execution of the pious donations and bequests.

3°. A religious made trustee or executor may have to notify either the local or his own Ordinary. If the property given him for a pious purpose is intended for the benefit of the churches, people, or pious works of a certain place or diocese, he must, even when personally exempt, notify the Bishop of that place or diocese who has jurisdiction over these churches, people, or institutions. Otherwise he notifies his own Ordinary, that is, the Bishop of the place in which he

resides and in the case of a member of an exempt clerical order, his religious superior. A religious with residence in Chicago receiving a donation in trust for his order, another for a parish and college that they have in the diocese of Peoria and another for their house of studies in St. Louis should report for the first to his own Ordinary, for the second to the Ordinary of Peoria, for the third to his Ordinary, that is, the Ordinary of Chicago or if he belongs to an exempt clerical order, his religious superior. (Cf. Com. Pro Religiosis, 1922, p. 266.)

344. 5. *Changes in Last Wills.* (Can. 1517.) Unless the founder has given that power expressly to the local Ordinary also, the Apostolic See alone has authority for the reduction, alleviation, or commutation of last wills and these always suppose a just and urgent cause.

1°. This canon deals only with testaments or donations *causa mortis,* that is, with the last intentions of the deceased, for as long as the donor lives he can and should in case of difficulty make the necessary changes in his demands.

2°. Reduction implies a diminution of the charges as if the number of Masses to be celebrated was brought down from one hundred to fifty. Alleviation of the burden results from a modification of conditions as if the sum of money left for the building of a church on a certain plan having proved insufficient the plan would be modified to correspond to the resources. Commutation involves the substitution of a work for another, v. g. a school in place of a church.

3°. Justice itself requires strict execution of last wills but the Pope as interpreter of the divine

law may under certain conditions permit a lenient application of this rule. He does not and even can not do so except for just or proportionately grave reasons and in cases of necessity. Motives of mere convenience would not suffice for the lawfulness and validity of the action. The Pope usually exercises this power through the Holy Penitentiary, the Congregation of the Council, Propaganda or Religious according to the case.

345. 4°. Testators can authorize local Ordinaries to change their wills; in the absence of an explicit provision to that effect the common law allows them to make such changes only in the impossibility of fulfilling the clauses of the donation or testament.

This impossibility must be a real although merely moral one. It may arise from a diminution of the revenues or from other causes, an increase in the expenses, in the cost of living, altered conditions rendering the foundation without object. It must not be due to any fault of the administrators.

Before proceeding to the reduction the Ordinary should consult persons whom it concerns, the heirs, beneficiaries, etc.; he should try to find out the mind and interpretative intentions of the testator and conform to them as much as possible. Money not needed for distribution of bread to the poor might presumably in accordance with his wishes serve for the education of their children.

The reduction ought to keep within the limits of equity and not go beyond what necessity reasonably commands.

5°. In all cases the reduction of Mass obligations remains reserved to the Holy See exclusively, except for an explicit permission from the founder. (Com. Int., July 14, 1922; A. A. S., p. 528.)

TITLE XXVIII

ADMINISTRATION OF CHURCH PROPERTY

(Can. 1518–1528.)

(Thomassin, P. iii, L. ii, c. 1–11; Catholic Encyclopædia, Property; Dictionnaire de Théologie, Biens Ecclesiastiques; Dictionary of Christian Antiquities, Property; Œconomus; Bingham, Antiquities, B. V. c. vi; Wernz, n. 147; Vermeersch, n. 838; Cocchi, 197; Blat, 430; C. Bouuaert and G. Simenon, Manuale Juris Canonici, Louvain, 1924, 1005; Canoniste Contemporain, Juillet, 1922, p. 304.)

PRELIMINARY NOTIONS.

346. 1. Administration includes all the acts pertaining to the preservation and development of the property, to its exploitation and to the distribution or application of its fruits.

The administration of ecclesiastical property belongs exclusively to the Church and her representatives according to her constitution to the exclusion of any external interference.

2. During the first centuries the Bishop administered the whole ecclesiastical property in his territory with the help of his priests and deacons. (Antioch, 341, Can. 24, 25; Gangra, 340, Can. 7, 8; Chalcedon, 451, Can. 8, 17, 26; Orléans, 511; Toledo, 859, Can. 19; C. x, Q. i.)

In the fourth century we find mention of an official called *œconomus* upon whom devolved the greater part of the financial cares of the diocese. A little later the Council of Chalcedon (451, Can. 26) commands every Bishop to have an *œconomus* carefully chosen among his priests or deacons and responsible to him. In more important matters he had to take the advice of his clergy whom synods recommend him to keep acquainted with the affairs of the diocese, and in case of maladministration he was accountable to the provincial synod. (Antioch, 24, 25.)

Even after the division of Church property between the rectors of particular parishes and institutions which began in the fourth and fifth centuries the Bishop still retained a large share in its administration. (Frankfort, 794, Can. 48; Mayence, 813, Can. 8.) A Council of Rome (1059, Can. 5) gives to the Bishop full control of tithes, first fruits, and oblations. Gratian after quoting several texts of Popes and synods concludes that the government of all ecclesiastical property belongs to the Bishop. (C. x, Q. i, conclu.) In the decretals of Alexander III (1170), Innocent III (1210), and Honorius III (1218) we find indications of a change in the discipline. (13, 29, x, iii, 30; 16, x, i, 31.) Already the Council of Trosley (908, Can. 6) seemed to imply that pastors have full charge of parish property under the Bishop. The division of church funds had become more and more complete and monasteries first, then parishes had acquired gradually financial autonomy. Pastors now administered the property of their church but the Bishop exercised over them

a supervision which legislation had defined with greater precision to render it more efficacious. Above the Bishops stood the Roman Pontiff whose action had come to extend its influence to all parts of Christendom and to all details of Church administration.

This organization has remained essentially the same to the present day. We have as administrators of ecclesiastical property, the Pope, under him local Ordinaries and under these, particular administrators.

I. THE SOVEREIGN PONTIFF. (Can. 1518.)

349. 1. As Bishop of Rome the Pope has the administration of the property belonging to his diocese in the same manner as any other Bishop.

2. As Head of the Church he has direct and immediate charge of the property belonging to the Holy See as such and intended for the support of the Pope personally, the Congregations, Tribunals, etc.; and also of the property which belongs to the universal Church and serves to meet its general needs.

3. As invested with the power of ruling over the whole Church he is supreme administrator and dispenser of all ecclesiastical property. He does not claim ownership nor ordinary administration of the funds of individual moral persons but he may and does direct particular administrators by general legislation, correct abuses when they creep in, and decide disputes when they arise.

He does also by virtue of his *Altum Dominium*, in special cases and for grave reasons, dispose of the property of churches and institutions, for ex-

ample, when he grants a reduction of charges or debts, accepts compromises, admits to composition heirs unwilling to pay in full pious legacies, renounces partially or entirely legitimate claims to confiscated property.

II. LOCAL ORDINARIES. (Can. 1519, 1520.)

348. 1. *Right of Supervision and Direction.* Under the present discipline Bishops administer the property of the episcopal benefice or *mensa* and that of the diocese as such. Over the administration of all other non-exempt ecclesiastical property in their territory they exercise a right of supervision and direction.

(*a*) They must watch carefully over all particular administrators, see that they discharge their duty faithfully and take all necessary measures to secure this fidelity.

Their supervision extends to all ecclesiastical property located in their territory and not withdrawn from their jurisdiction by common law or particular concession, and to all administrative acts of some importance. In some cases special provisions like explicit stipulations in the foundation of benefices may allow them to go beyond mere supervision and give them a direct share in the administration itself.

(*b*) They must regulate everything that pertains to the administration of ecclesiastical property and for this purpose issue special instructions when needed or enact statutes; but in all this they must keep within the limits of the common law not modifying any of its provisions, and take into account the rights of the various persons,

legitimate customs, and circumstances of place, time, persons, and foundations.

Summing up the rights and duties of the local Ordinary some canonists call him the supreme legislator of ecclesiastical property in his territory. (Wernz, iii, n. 150; Canoniste, l. c., p. 315; Cocchi, n. 200.) Some deny him this title which in fact the Code refrains from giving him. (Vermeersch, n. 840.) No doubt he has much to do with the temporal administration. He possesses legislative, judicial, and coactive power for the government of his diocese both in spiritual and temporal matters. (Can. 335 § 1.) At the same time it remains true that in the present organization of the Church each individual moral person enjoys real financial autonomy and has the administration of its own property, under proper control and direction; the Ordinary can not dispose of it except in cases, and to the extent, specified by law, as for the levying of taxes. All administrative acts must be executed in the name of the moral person.

349. 2. *Board of Administration.* (Can. 1520.) As the administration of ecclesiastical property presents numerous difficulties of various kinds the Ordinary may often need the advice of competent men for the proper discharge of his duty; the present law, therefore, orders the institution in every episcopal city of a permanent board of administration unless something equivalent to this already exists by legitimate custom or particular legislation.

(*a*) This board should consist of the Ordinary as president and two or more other members taken from the clergy or the laity, men of expe-

rience, prudence, and executive ability, skilled in canonical, and if possible, also civil, law. The Ordinary chooses them after conferring with the chapter or the diocesan consultors, unless custom or special decrees had introduced a different mode of appointment.

(*b*) The Ordinary may not take as members of this board his relations in the first or second degree of consanguinity or affinity. The Holy See alone could dispense from this rule. The Vicar General may belong to the board as Ordinary but not as distinct member.

(*c*) The Code urges the Ordinary to consult the board for all administrative acts of major importance, without making this a condition for their validity; regularly the members of the board have only an advisory vote. The Ordinary does not have to accept their decision except in cases the common law would so provide explicitly or the founders would have so stipulated.

On the other hand should the Ordinary act without the advice or the consent of the board when either is required the proceedings would be null and void.

(*d*) The members of the board must promise under oath in presence of the Ordinary to discharge their duty well and faithfully.

III. PARTICULAR ADMINISTRATORS. (Can. 1521–1528.)

350. 1. *Appointment.* 1°. Every moral person must have an administrator. The administration of a benefice normally belongs to the titular thereof. (Can. 1182, 1476.) For other moral persons like churches, hospitals, and various pious

institutions particular law and statutes or the charter of foundation will often designate the administrator. (Can. 691; 1182, 1183.)

In the absence of any such provision the local Ordinary must appoint for each moral person a distinct board of administration composed of men of good repute, prudent and capable. Their term of office lasts regularly three years, but it may be made longer or shorter if local circumstances render this advisable. The difficulty of finding men able and willing to carry the burden may often justify prolongation of the term or reappointment of the incumbents.

2°. Laymen have no right to share in the administration of church property. Ancient synods expressly reserve this to the clergy particularly to the Bishop. Even when they have provided the endowment laymen should leave its administration to the Ordinary. (C. xvi, q. vii, c. 22–27.) Councils reprimand Bishops for entrusting this administration to lay *œconomi*. (Seville, 619, Ca. 9; Châlons, 644, Can. 5.)

This discipline of strict exclusion continued till the latter part of the thirteenth century. The synods of Exeter in England (1287), Wurtzburg (1287) and Mayence (1300) in Germany, Lavaur (1368) in France, are the first to speak of laymen as having charge of some of the parish revenues. From this time on churchwardens play an important part in parochial affairs. (Gasquet, Parish Life in Medieval England, p. 103, 104, 109.) As the portion of revenues set aside for the repairs and upkeep of the church often proved insufficient the parishioners had to make up the deficit; to excite their zeal and arouse their inter-

est the administration of what they collected was left in their hands, but synods insist that churchwardens must receive their appointment or when chosen by popular election, confirmation of it from ecclesiastical authority, to which they have to give a strict account of their administration.

In modern times laymen have continued, by benevolent concession of the Church as synods often repeat, to help in the administration of ecclesiastical property. Their co-operation offers together with serious advantages some real dangers. They should assist and not rule as they have often attempted to do. The Pontiffs and Councils recommend so to organize boards of administrators or trustees as always to maintain them under ecclesiastical control. (Quebec, 1854, xv, 2; I Plen. Balt., 1852, xvii.)

The present law likewise allows laymen a share in, not control of, the administration of ecclesiastical property when the charter of foundation calls for it or the Ordinary approves of it; but it explicitly provides that the whole administration must even then be conducted in the name of the Church and the Ordinary retains his right of supervision and direction; he may exercise it in regular visitation, ask an account of everything and enact regulations which administrators ought to obey.

351. 2. *Duties of Administrators before Assuming Office.* (Can. 1522.) (*a*) Before assuming office particular administrators of church property must promise under oath in presence of the Ordinary or of the Vicar Forane to discharge their duty exactly and faithfully.

(*b*) An accurate, clear and specific inventory

must be made of the immovable property and of movable goods whether precious or not belonging to the moral person, omitting nothing of importance, giving a description of the various assets and an estimation of their value. All the administrators sign the document.

If an inventory exists already it may serve for this purpose after proper modifications, additions, or corrections.

(*c*) A copy of this inventory must be kept in the archives of the administrative board and another in the archives of the diocesan curia. In both of them the changes which may take place in the patrimony should be noted in due time.

352. 3. *Duties of Administrators in the Exercise of Their Functions.* (Can. 1523–1527.) 1°. *Care of the Property.* Moral persons are considered by law as minors and their administrators as guardians. (Can. 100, § 3.) Of the latter the same solicitude in the fulfillment of their office is expected as of a father of a family; they ought, then:

(*a*) To exercise prudent and active vigilance to prevent loss or deterioration from whatever cause in any of the goods confided to them;

(*b*) To fulfil their office in conformity with the prescriptions of canonical and civil law and with the special regulations laid down with necessary approval by the founder or donor or competent authority.

In regard to contracts the Church generally accepts the provisions of the civil law of the country (Can. 1525) and even when these have no canonical value prudence may still counsel com-

pliance with, which supposes some knowledge of, them;

(*c*) To collect faithfully and in due time the revenues of all kinds belonging to the moral person such as produce, rent, interest on money, dividends, etc., keep them in safety and employ them in accordance with the will of the founder if manifested implicitly or explicitly, or with existing regulations and directions from lawful superiors;

(*d*) To invest for the benefit of the church with the consent of the Ordinary whom it concerns the surplus revenues or disposable funds that admit of safe and profitable investment;

(*e*) To keep the accounts of income and expenditure in perfect order so as to avoid danger of confusion and misunderstandings;

(*f*) To have the papers, letters, notes, writings of any kind, and title deeds or public documents on which rest the church's rights, properly classified for ready reference and to keep them in the archives or safe of the church. As far as possible or convenient an authentic copy of these documents should be preserved also in the diocesan archives.

353. 2°. *Treatment of Employees.* (Can. 1524.) All employers have towards their employees duties of justice and of charity which no Christian should neglect; the Code recommends them particularly to the attention of ecclesiastics, religious, and administrators of ecclesiastical property:

(*a*) Justice demands that workmen be paid fair and adequate wages corresponding to the

economic value of the labor furnished by them and sufficient under normal conditions to support them in frugal and reasonable comfort.

At least charity if not strict justice should prompt employers to give wages enabling the laborer to support also his wife and children, that is, a family of average size.

(*b*) Workmen should have ample time and opportunity for the discharge of their religious duties and proper care of their soul, which means ordinarily cessation of labor on Sundays and rest consecrated by spiritual influences not given to idleness and dissipation.

(*c*) Under no pretext should employers keep workmen from their domestic duties and unduly interfere with family life, unnecessarily separating husband from wife and parents from children.

(*d*) They ought to encourage frugality and habits of thrift, not favor extravagance or offer occasions for unreasonable expenses.

(*e*) "It is neither justice nor humanity so to grind men down with excessive labor as to stupefy their minds and wear out their bodies. Daily labor must be so regulated that it may not be protracted during longer hours than strength admits taking into account the nature of the work, circumstances of time and place, and the health and strength of the workman. . . Children should not be employed in workshops and factories till their bodies and minds are sufficiently mature. . . Women are not suited to certain trades, for woman is by nature fitted for home-work, and it is that which is best adapted at once to preserve her modesty and to promote the good

bringing up of children and the well-being of the family." (Leo XIII, Rerum Novarum, May 15, 1891.)

354. 3°. *Annual Accounts to the Ordinary.* (Can. 1525.) All administrators of ecclesiastical property whether lay or clerical must render accounts to the local Ordinary every year. The Code reprobates any custom contrary to this rule but it does not withdraw privileges previously granted.

(*a*) This law applies to administrators of every secular church, including the cathedral church, even when governed by exempt religious (Can. 1182 § 3), and to those of public oratories (Can. 1191) but not to those of churches or chapels belonging to exempt religious and reserved to their exclusive use. (1516, 3.)

(*b*) It applies also to administrators of pious places or moral non-collegiate persons such as hospitals (Can. 1498 § 1) canonically erected even if otherwise exempt and conducted by religious enjoying the same privilege. (Can. 1492.)

(*c*) Administrators of Confraternities (Can. 707, 708) and all pious associations canonically erected (Can. 687), even though affiliated with archconfraternities or existing in the church of exempt religious, must likewise render their accounts to the local Ordinary.

(*d*) Should special statutes which the Code does not annul require that the accounts be rendered to other persons designated for this purpose, the Ordinary must still retain his full right. He may assist at the rendition of accounts given according to this particular ruling or demand a

report to himself personally. Any clause excluding him would be null and void in Canon Law and could not free administrators from their obligation.

355. 4°. *Recourse to Ordinary in more Important Matters.* (Can. 1526, 1527.) (*a*) For going to court, civil or ecclesiastical, in the name of the church or pious place whether as a plaintiff or a defendant, an administrator must have the written permission of the local Ordinary. In urgent cases he may obtain it from the rural dean who will at once report the case to the Ordinary. Should he institute a lawsuit without authorization and lose it he would have to stand the consequences.

(*b*) He needs likewise the local Ordinary's written permission for any act which exceeds the limits and mode of mere administration and this for the validity of the act.

The Church does not recognize contracts made by administrators without leave from competent superiors except when they turn favorable; as minors ecclesiastical moral persons enjoy the favor of the law. If the contracts result in a loss to them the administrator who thus acted in illegal manner must make up for it.

In an Instruction to the Bishops of Holland the Cong. of Propaganda enumerates as exceeding the limits of mere administration and requiring special permission the following acts: accepting or refusing inheritances, legacies, or formal donations; accepting or renouncing foundations; buying immovable property; selling, exchanging, mortgaging, giving as security, burdening with servitudes or renting out immovables for

more than three years (cf. Can. 1541); selling, exchanging, giving as security or turning away from their destination in whatever manner objects of art, historical monuments, or other movable property of real importance; borrowing large sums of money, making onerous contracts; building cemeteries; establishing or suppressing parochial institutions; imposing taxes, establishing collections, or giving to others those which belong to the church. (July 21, 1856, Coll. P. F., n. 1127.)

356. 4. *Continuation in Office.* (Can. 1528.) Administrators after accepting their office either explicitly or tacitly may not relinquish it at will, without legal cause or the intervention of the proper superior; if they do so and as a consequence the church or pious institution suffers some loss they are bound to make reparation even though they had no obligation to assume the burden by reason of an ecclesiastical office or benefice. The rule holds for laymen also.

TITLE XXIX

ON CONTRACTS

(Can. 1529–1543.)

(D'Annibale, Summula Theologiæ Moralis, iii, 300; Wernz, iii, 154–173; 227–272; Sebastianelli, o. c., p. 358; Ojetti, Synopsis, Contractus; Vermeersch, 849; Cocchi, 209; Blat, 443.)

I. NATURE AND KINDS.

357. 1. A contract may be defined as an agreement between two or more persons from which arises an obligation of justice for at least one of the parties.

Every contract requires an object, free consent, and legally qualified persons. Canonists call *solutiones,* payments, any act or transaction by which an obligation is extinguished, like the various ways in which a debtor may satisfy his creditors.

2. Contracts are known as consensual when the consent of the parties suffices for their completion; real when for their validity they require at least a beginning of execution; unilateral or bilateral according as they bind on one side only or on both; gratuitous, like a pure donation or promise without compensation, or onerous like a sale or exchange; *nominati* when they have a

specific name, like a loan, a donation, and *innominati* when they have no special name such as contracts designated by the formulæ, *do ut des, facio ut facias, do ut facias, facio ut des.*

Other divisions found in canonists or jurists have not so much practical importance or require no explanation.

II. ECCLESIASTICAL CONTRACTS AND THE CIVIL LAW. (Can. 1529.)

358. 1. Besides the elements which belong to the essence of contracts in general or of some of them in particular, positive law, civil or ecclesiastical, can prescribe certain formalities or lay down conditions for their lawfulness or even validity.

Civil prescriptions can not of themselves affect ecclesiastical contracts, that is, those which have ecclesiastical property for their object, but the Church adopted most of the provisions of the anient Roman Law on contracts and also some of those of the Germanic or modern legislations, giving them canonical force and now the Code extends this to the respective laws of each country.

2. In each country the enactments of the civil law in regard to contracts in general or some of them in particular, whether *nominati* or *innominati,* named or nameless, and also in regard to solutions, have canonical force in ecclesiastical matters and produce the same effects, unless they would run counter to the divine right or Canon Law would provide otherwise.

(*a*) The Church does evidently not intend to adopt provisions contrary to the natural law and

moreover, whilst generally sanctioning the prescriptions of the national law, she makes some exceptions and reserves certain matters to herself, for example, as said before, for the validity of last wills and donations *mortis causa* in favor of pious causes she demands only the fulfillment of the requirements of the natural law. (Can. 1513.)

The rules laid down in this Title regarding alienation of church property and other particular contracts must always be observed and in case of conflict with civil enactments they must prevail, as must canonical law in all ecclesiastical matters. For this reason although civil legislation often annuls all agreements concerning, or renunciations to, future inheritances the religious constitutions permitting them before solemn profession retain their value.

(*b*) In the absence of any canonical ruling, civil enactments pertaining to the ability of the contracting parties, the form of contracts, their effects, implied clauses, etc. apply in ecclesiastical as well as in civil contracts. Some would withdraw the conditions for ability from the scope of this law but without much apparent reason. (Vermeersch, n. 850.)

(*c*) The same principle holds for solutions or payments, the time, place, manner of effecting them, the various ways of extinguishing obligations, the mode of proceeding in cases of insolvency even in regard to ecclesiastical creditors. An insolvent cleric, however, would benefit by the privilege of competency as far as it extends. (Can. 122.)

Subsequent official declarations may deter-

mine with greater precision the meaning of this canon which admits of numerous and complicated applications.

III. GENERAL PROVISIONS ON ALIENATION OF ECCLESIASTICAL PROPERTY. (Can. 1530–1534.)

359. 1. *Nature of Alienation.* 1°. Alienation in general implies transfer of a right actually possessed, *jus in re,* whether right of ownership, of use or usufruct or of possession; we find such transfer in sales, donations, exchanges, bailments, concessions of securities, mortgages, prolonged leases, cession of acquired rights, admission of servitudes; not in purchases or payments of debts with money not stabilized as capital (Vermeersch, 851; cf. Prummer, 451; Wernz, 154); nor in thefts, damnification, or repudiation of donations offered.

2°. The Code assimilates to alienations in regard to the formalities they require, acts and contracts liable to impair the status of the church or moral person, such as compromises, transactions, borrowing of money even without mortgage. (Can. 1533; 1538 § 1.)

3°. The rules here laid down concern only property belonging to a moral ecclesiastical person not simply to a pious association without canonical personality and they apply to all transfers of right whether from one ecclesiastical moral person to another or to a lay or individual one.

360. 2. *Legitimacy.* The Church and ecclesiastical persons evidently possess the right of disposing of their property without external inter-

ference, but administrators must exercise it only to the advantage of the moral persons whose interests they have mission to promote; and because they did not always use all desirable discretion or prudence Pontiffs and synods restricted their liberty very much.

St. Leo the Great in a letter to the Bishops of Sicily forbids them to alienate church property except for the benefit of the church and with the consent of their clergy. (447, Ep. 17.) Pope Hilary sent similar instructions to the Bishops of Gaul. (462.)

The Council of Agde positively forbids Bishops to alienate movable or immovable ecclesiastical property. If necessity compels them to do so they must obtain the written consent of two or three of the neighboring Bishops. (506, Can. 7.) In another canon (45), however, it allows them to dispose of fields and vineyards of little value (Terrulas et Vineolas; 43, C. xii, q. ii) without the advice of the brethren. The lower clergy could not sell or give away anything belonging to their church without incurring excommunication. Many other synods enacted similar rules.

The Constitution Ambitiosæ of Paul II (1470) which had remained in force till the publication of the Code demanded permission of the Holy See for the alienation of all immovables of some value and of precious movables.

In the United States according to the Third Plenary Council of Baltimore (n. 20) Bishops must take the advice of their consultors for any alienation involving a sum greater than $5,000 and need besides papal leave; but owing to the

special conditions of the country the Holy See dispensed them from the latter formality for a certain time on condition that every three years they would send a report to the Propaganda on the use they had made of the privilege. Pastors may not alienate church property without the Bishop's permission under pain of censure.

The present law maintains the ancient discipline with some important modifications. It does not forbid alienation absolutely but sets forth strict conditions for its lawfulness or validity.

361. 3. *Conditions or Formalities.* (Can. 1530.) The law does not prescribe any for the alienation of goods perishable or easily consumed or useful only when disposed of like produce, fruit, crops, young stock, money. For all goods, whether movable or immovable, not subject to prompt decay, of permanent value like fields, title deeds, books, etc., it requires the following formalities some of which, however, strictly apply to onerous contracts only:

1°. Valuation of the goods, in writing, by conscientious experts at least two in number. This would not seem necessary in gratuitous transactions nor in any case for the validity of the act.

2°. Just cause, *viz.* urgent necessity, general or particular, for example, payment of a debt, repair which suffers no delay; evident utility of the church, like the building of a much-needed school in a parish, much more profitable investments; piety, which includes all the duties of religion and charity. We read of prelates selling even their sacred vessels in times of special distress to procure food for the needy or giving up portion of the ecclesiastical revenues to help their country

in a just war or in moments of national calamity.

Ancient canonists consider alienation of ecclesiastical property without sufficient cause as invalid. (Wernz, n. 163.) Commentators of the Code treat it only as unlawful, this canon containing here no annulling clause. (Cocchi, 215.)

3°. Permission from the legitimate superior and this for the validity of the act as explicitly stated.

4°. Other formalities prescribed by the superior when special circumstances demand it for the protection of the moral person's interests.

362. 4. *Just Price.* (Can. 1531.) 1°. The judgment of the appraisers on the value of the property ought to serve as a norm and the law forbids, not, however, under pain of nullity, alienation for a lower, even though in itself fair, price.

2°. As a means to obtaining more advantageous offers the legislator recommends sale by auction or at least with sufficient publicity. In some cases this way of proceeding might prove of little profit or even, owing to special circumstances, positively hurtful. This provision would not then bind.

3°. The sum realized from alienation of ecclesiastical property should regularly be invested and bear fruit; the wording of this canon would not seem to permit the use of it for an immediate need like the relief of the poor. Some interpreters understand it in this sense. (A. A. S., 1919, p. 417.) The ancient law, however, left more freedom to administrators and the preceding canon allowing alienation for motives of urgent necessity or piety implies possibility of us-

ing the proceeds otherwise than for profitable investments.

When not employed for some legitimate purpose they should be invested, and in this the legislator recommends caution and prudence to secure safety and fruitfulness, avoid the danger of loss, confiscation, or unjust taxation and at the same time obtain reasonable returns. The administrator would seem to need for this operation at least as a matter of prudence the advice of the Ordinary, of the diocesan board of administration and of the parties concerned. (Can. 1547; Periodica, June 1922, p. 24; N. R. T., Mars 1920, p. 146.)

363. 5. *Permission from Legitimate Superior.* (Can. 1532.) 1°. By common law the Holy See alone, that is, the Cong. of Council or Propaganda, or Religious or Oriental Churches according to the case, can authorize the alienation of:

(*a*) Important relics or precious images and relics or images held in great veneration by the faithful in some church or sanctuary (Can. 1281 § 1); likewise votive offerings dedicated to religion and permanently connected by the will of the donors with a certain shrine, statue, image, etc. (S. C. C., July 12, 1919; A. A. S., 1919, p. 416; Jan. 14, 1922; A. A. S., 1922, p. 160; Monitore, 1920, p. 75; N. R. T., Mars 1920, p. 135; Sept., 1922, p. 430.)

(*b*) Any property, movable or immovable, the value of which exceeds 30,000 lire or francs which corresponds, in normal conditions and according to the gold standard the only one that can supply a fixed rule, to about $6,000. (Blat, n. 448; Cocchi, n. 217; Vermeersch, n. 819.) The value

here taken into account is the one set on the property by the appraisers even though purchasers would offer a higher price. (Comm. Int., Nov. 24, 1920.)

(*c*) Objects called precious as possessing notable value by reason of their artistic merit, their historical character or their material worth. (Can. 1497 § 2.)

The Code does not define what this notable value is which renders such objects precious in the canonical sense of this term. Interrogated on this subject the Cong. of Council referred the matter to the Commission of Interpretation which has not as yet published its decision. (S. C. C. July 12, 1919; Jan. 14, 1922.) Some canonists would consider as precious only objects the value of which exceeds 30,000 lire; but this can not be the meaning of this canon which distinguishes between such objects and those which it calls precious. Others going to the other extreme would recognize as precious anything having any historical or artistic value forgetting that the Code adds the qualificative notable, no doubt, for some purpose.

Under the former legislation which required permission from the Holy See for alienation of immovables of great value and precious movables canonists had generally come to apply the rule to all property movable or immovable worth about 1,000 francs. (D'Annibale, n. 172; Wernz, n. 165.) Some would still retain this estimate under the present law for objects which it calls precious as distinct from ordinary property for which it gives a different rule, and treat them as of notable value when worth 1,000 francs. A few,

however, find this too severe and would go as far as 10,000 francs for notable value in the case of precious objects since with ordinary ones the law now goes to 30,000. They argue also from an Instruction of the Congregation of Religious which calls notable debts of 10,000 francs. (July 30, 1909.) Pending an official declaration the former view would appear safer in practice. (N. R. T., 1920, p. 145; Monitore Eccl., 1920, p. 75; Cocchi, n. 217.)

364. 2°. The local Ordinary, which includes the Vicar Capitular or Administrator of the diocese may authorize: (*a*) Alienations of very small importance without any special formality;

(*b*) Alienation of objects the value of which does not exceed 1,000 lire or about $200. For this he must take first the advice of the board of administrators and obtain the consent of the interested parties.

The law does not explicitly prescribe consultation with the administrators as condition for validity, hence some require it only for the lawfulness (Vermeersch, n. 854) but others, on general principles (Can. 105) demand it also for the validity of the act. (Besson, N. R. T., Février 1920, p. 69.)

The parties concerned are those involved in the contract, beneficiaries in the case of beneficial property, the collegiate persons or moral bodies owning the property in question. Their consent pertains to the essence of the transaction; hence the nullity, as declared by the Cong. of Bishops and Regulars, June 14, 1788, of all alienations of mensal property during the vacancy of the see for want of consent of the party concerned.

(*c*) The local Ordinary may authorize also alienation of property the value of which exceeds 1,000 francs provided it does not go beyond 30,000 but for this he needs a threefold consent and each one as a condition for the validity of the act, the consent of the cathedral chapter or of the diocesan consultors, of the board of administrators, and of the parties concerned.

The Congregation of Council declared that in case of disagreement between the chapter and the administrative board the Ordinary could not supply the consent of either (Jan. 14, 1922, ad V), therefore he could not proceed to the alienation.

By special Indult Ordinaries frequently have, for example in the United States, faculties to authorize alienations up to $20,000 or even $50,000.

In the alienation of property forming a whole, physical or moral, yet divisible the administrator can not evade the law by means of successive partial transactions, selling, for example, real estate, a flock of sheep, a library, in small portions for each of which he would need only the Ordinary's consent. Every request for permission or consent must in such cases, under pain of nullity, contain mention of alienations previously made.

365. 6. *Validation.* Under the former discipline alienation null for lack of the Ordinary's or chapter's consent could be validated by subsequent ratification. (2, x, i, 25; 3, x, iii, 10.) The Congregation of Council, however, has declared that an Ordinary can not now validate one made without his consent by mere actual approval.

The present law, then, would not give him that power as the former one seemed to do (May 17, 1919). He can certainly not validate the act *in radice* with retroactive effect; those who benefited by it and, for example, appropriated the fruits of property thus bought invalidly remain bound to make restitution, for the past. For the future the Congregation may perhaps not mean, although it makes no distinction, that the contract may not acquire full value by the addition of the needed consent, nor would it seem necessary to make an entirely new contract and go once more through all the formalities complied with already. (N. R. T., Fev. 1920, p. 69, 77.) In regard to the past the Ordinary may in small matters remedy the evil effects of the nullity; for more important ones he should have recourse to the Holy See for compromise or composition.

366. 7. *Remedy against Illegal Alienation.* (Can. 1534.) 1°. If the alienation is valid and illegal only for want of non-essential formalities the church or moral body has the right to bring a personal action for recovery of property or at least damage against the author of the illegal alienation or his heirs.

2°. In case of invalid alienation the church would have the right to bring a real action against the possessor of the property thus acquired in an illegal manner although possibly in good faith, that is the church can claim the property whoever may now be in possession of it.

Proceedings for its recovery may be instituted by the party himself responsible for the invalid alienation, by his superior and successor and by any cleric connected with the church that sustained

some loss from the transaction; for some of these persons to do so may even be a strict duty of justice or of charity.

IV. PARTICULAR RULES FOR SPECIAL CONTRACTS.

(Can. 1535–1543.)

To the general rules that govern alienations and all contracts coming under that name in the sense explained above the Code adds special ones called for by the particular nature of some of these contracts.

367. 1. *Donations.* (Can. 1535, 1536.) Donation as a gratuitous concession of property to one who accepts it involves alienation and this without compensation.

1°. *Donations Made by the Church.* (*a*) The law does not admit that prelates, Bishops or religious superiors, rectors of churches or administrators of ecclesiastical institutes have authority to give away freely immovable property belonging to their churches or institutes, supposing, no doubt, that it has some appreciable value.

(*b*) From the immovable property it allows them to make small and moderate donations according to legitimate local custom, for example, to give away eatables, small sums of money, little presents, as generally done in the place by persons in the same financial condition or perhaps a little more freely in keeping with the spirit of ecclesiastical generosity. These are considered as acts of ordinary administration rather than as alienations.

(*c*) More important donations are permitted only for just causes which the legislator here re-

duces to three: reward or remuneration for services rendered; piety or duty to God, to religion, to benefactors, to country; Christian charity. The validity of these causes and the extent to which they justify liberality with ecclesiastical goods are left to the appreciation of the donor.

These donations seem to require the same authorization as other forms of alienation (Can. 1532) and hence neglect of this formality would render them invalid and give rise to real action against the illegal possessor. (Can. 1534.)

When made without just cause the successors have the right to revoke them and not simply to bring personal action against the donor as in the case of ordinary alienations.

368. 2°. *Donations Made to Rectors of Churches.* (Can. 1536.) (*a*) Except for proof to the contrary donations made to rectors of churches even if the rectors belong to a religious order are supposed made not to rectors personally, nor to the religious community but to the church, parish, or mission.

This principle, laid down in the Constitution *Romanos Pontifices* which Leo XIII addressed to the Bishops of England and Scotland, May 8, 1881, and the Holy See extended afterwards to the United States (Sept. 25, 1885; Plen. Balt., p. cv, 212) and to the Philippine Islands (Jan. 1, 1910) has now become part of the general law of the Church.

The presumption in favor of the church yields to contrary evidence, direct or indirect, explicit or implicit as long as it establishes with moral certainty a different intention of the donor. Benefactors may also give property for the bene-

fit of the diocese or mission and yet leave the administration in the hands not of the Ordinary as would regularly follow, but of some other ecclesiastical person, of a religious community, provided the latter have to give an account to the Ordinary. (Can. 1516.)

369. (*b*) Rectors or superiors have no authority to refuse donations made in favor of the church or institute under their charge without permission from the Ordinary, the Bishop, or major superior in clerical exempt orders; for this rule applies also to religious and to local superiors.

Such refusals although not involving alienation properly so called may have for the church in some cases the same injurious effects.

(*c*) Should an illegal refusal cause a real loss to the church, the latter or its representatives have the right to bring suit for restitution *in integrum* or indemnity, that is, they may claim the privilege of accepting now or having accepted the offered donation or if this seems less desirable or perhaps has become impossible because the property has passed into other hands, they may demand from the party responsible for the illegal refusal a full reparation of damages suffered as a consequence thereof; he might, for example, have to pay for a house acquired as a substitute for the one he refused.

(*d*) Civil law frequently allows revocation of duly accepted donations for various causes, and chief among them qualified ingratitude of the beneficiary or subsequent birth of legitimate offspring. Ancient Canon Law admitted in general the same as causes for rescission of pious donations. (10, x, iii, 24; Wernz, 255.) Un-

der the present law the provisions of the respective legislations in the different countries apply also in ecclesiastical matters to donations *inter vivos* (Can. 1529) but the Church does not admit ingratitude on the part of the prelates or administrators as sufficient cause for rescission of donations made to the institute or moral person under their charge. They are not the real beneficiaries and the church should not suffer punishment for the faults of its representatives.

370. 2. *Commodatum or Gratuitous Lending of Ecclesiastical Property.* (Can. 1537.) The law supposes that administrators of ecclesiastical property, movable or immovable, sacred or profane, corporeal or incorporeal, may permit the use of it by others, temporarily and gratuitously, only with condition of receiving it back in its specific nature not in its equivalent.

Should the church suffer thereby some notable loss this contract called *commodatum* would come under the law of alienation (Can. 1533), otherwise it is governed also in ecclesiastical matters by the provisions of the civil law (Can. 1529), except that in regard to sacred things, that is, objects dedicated to divine service by consecration or constitutive blessing (Can. 1150) the Code, for obvious reasons, strictly and absolutely forbids the loan of them for purposes repugnant to their nature; it would not permit, for example, the use of consecrated chalices in a profane banquet or of sacred vestments in a theatrical performance.

371. 3. *Mortgages, Bailments, Debts.* (Can. 1538.) For just causes, such as necessity, utility, or piety (Can. 1530), churches or other moral ec-

clesiastical persons may mortgage their property or give it as security or incur indebtedness.

As these contracts partake of the nature of alienation or at least may impair the financial status of the church (Can. 1533) they come under the same law as alienations and need the same authorization. Regularly to borrow more than 30,000 lire a parish must have recourse to the Holy See. (Can. 1532; cf. 534.)

The law demands, moreover but not as a condition of validity, that the superior empowered to authorize them, besides complying with all the formalities prescribed for alienation and applicable to the case, obtain first the views and advice of all parties concerned in the transaction, for example, administrators, rectors, superiors of communities and their counsel, persons who may have to pay the interest, etc.; he does not have to follow their suggestions.

As far as depends on him he should make provision for prompt payment of the debt or redemption of the mortgage and security. For this purpose the legislator asks him to determine the amount of annual payments, supposing this to be possible and of real advantage to the church.

Under certain circumstances a mortgage on ecclesiastical property adds to its security or permits reduction of taxes.

When the church has fixed revenues the superior may set aside a fixed portion of them towards extinction of the debt; or he may appeal for a yearly contribution for the same purpose.

372. 4. *Sale and Exchange.* (Can. 1539.) Sale of its nature and exchange at least as liable to impair the interests of the church, fall under the

law on alienation; the Code contains, besides, two special provisions concerning them;

(*a*) Whilst the present law does not forbid the sale or exchange of sacred objects it remains contrary to ecclesiastical, and divine, right as well to set a price on their consecration or blessing and to take these into account in their valuation, to exchange, for example, a chalice of great value for one of lesser value because the latter has received the consecration.

(*b*) Exchange of notes payable to bearer for other titles or investments should regularly follow the same rules as other forms of exchange or alienation and the Congregation of the Council in a particular case gave a decision in that sense affirming the necessity of recourse to the Holy See for such transactions when they involve important sums. (Feb. 17, 1906; N. R. T., Sept. 1906.) This seemed, however, rather severe and of difficult application in practice. Those exchanges occur frequently, they call for quick action and often demand secrecy; they bear some resemblance to exchange of, for example, silver for paper money. (Periodica, Sept. 1906, p. 89; N. R. T., Août, 1907, p. 423.)

The Code, therefore, does not treat them as alienations in the full sense of the term and does not require for them recourse to the Holy See; but it maintains for them the necessity of the other formalities, consent of the Ordinary, of the board of administrators, and of the parties concerned.

It commands, at the same time, to exchange these notes for other titles or investments at least equally safe and profitable whatever their nature

otherwise; and it reminds ecclesiastics of the prohibition against any species of trade or speculation, dealing in shares and stocks, gambling, engaging in enterprises of a purely business or commercial character.

373. 5. *Lease or Rent.* (Can. 1540, 1541.) A distinction is made here between leases of ecclesiastical property in general and leases of land belonging to the Church.

1°. *Lease of Land.* (*a*) The legislator recommends for this the same way of proceeding as for alienations in general, *viz.* public auction or at least public announcement of the transaction and awarding of the contract to the highest bidder unless circumstances suggest a different course.

(*b*) He demands that the contract clearly indicate the exact boundaries of the property, specify the nature of the cultivation or care expected, define the time and mode of payment of the rental, and secure guarantees for the fulfillment of these conditions.

2°. *General Conditions for Lease of Ecclesiastical Property.* (*a*) Canon 1479 which forbids anticipated payment of rentals for over six months without permission of the Ordinary finds its application here.

(*b*) When the value of the lease or annual rental exceeds 30,000 lire or francs and the lease runs more than nine years permission from the Holy See is needed; if the contract was not made for more than nine years the Ordinary could grant the authorization with the consent of the cathedral chapter or diocesan consultors, of the board of administrators, and of the persons concerned.

(*c*) When the annual rental although exceed-

ing 1,000 does not go beyond 30,000 lire if the contract is made for more than nine years the Ordinary can also give the permission with consent of the cathedral chapter or diocesan consultors, the board of administrators and parties concerned.

If the contract is not made for more than nine years permission from the Ordinary is still required but he may grant it with the consent of the parties concerned after consulting the board of administrators. (Can. 1532 § 2.)

(*d*) These same formalities (Can. 1532 § 2) have to be observed in a lease for over nine years, the rental not exceeding 1,000 lire.

If that lease does not run more than nine years the legitimate administrators may make the contract without special authorization; they have only to notify the Ordinary.

3°. To remove the occasion of possible abuses, real or apparent, the Church forbids the sale or lease of immovable ecclesiastical property to the administrators themselves or their relations by blood or marriage in the first or second degree without special permission from the Ordinary of the place.

This rule does not seem to apply to the property of religious. (Blat, n. 456.)

374. 6. *Emphyteusis.* (Can. 1542.) 1°. *Nature.* This is a species of lease confined at first to waste lands requiring considerable work and expense to reclaim them but afterwards applied also to other immovable property.

Jurists define it as a contract transferring full use and usufruct of immovable property in consideration of an annual payment called canon. In

many countries it has gone out of use at least as far as concerns the Church. Where it exists it follows the rules laid down for alienation or long leases (Blat, 458), and the following special ones:

2°. *Special Rules.* (*a*) Ordinarily the *emphyteuta* or lessee has the privilege of redeeming the canon; that is, of paying for the rental once for all so as to have no further obligation. For this the same permission is needed as for a contract of alienation. (Can. 1532.)

The amount paid for this redemption should correspond to the value of the canon, that is, constitute a capital yielding a revenue equivalent to the rental.

(*b*) From the *emphyteuta* should be exacted proper security for payment of the canon and fulfillment of all other conditions.

(*c*) In the *emphyteutic* contract it should be stipulated that the ecclesiastical court will have authority to settle all possible controversies that may arise between the parties and that all improvements accrue to the soil.

375. 7. *Contract of Mutuum and Interest on Money.* (Can. 1543.) 1°. Ancient canonists called *mutuum* as distinct from *commodatum* or *locatio* the loan of goods consumed by first use and returned in the same species, quantity and quality, v. g. bread, oil, wine, fruit, and chiefly money. They considered this contract as essentially gratuitous and did not allow the lender to exact any compensation for the use of goods thus loaned for in these matters use and ownership are inseparable and by returning the equiv-

alent of the goods the borrower gave back as much as he had received.

They admitted, however, that the lender may demand a compensation for the risk of losing his capital, loss suffered, or privation of profit he might have made and other reasons extrinsic to the contract itself. In modern times, owing to changes in economic conditions and the habitual utilization of money for productive purposes these reasons or extrinsic titles were found to exist in nearly every case. The practice, therefore, had come to prevail universally even among conscientious people, with the toleration and at least indirect approval of the Church to charge a moderate interest on money loaned.

2°. Without advancing any theory to justify its doctrine the Code maintains the principle of the essentially gratuitous character of *mutuum* and at the same time the legitimacy of interest on money:

(*a*) When goods called fungible or consumed by first use are given to a person so that they become his and can be restored only in goods of the same kind no profit can be derived from the contract itself.

(*b*) But it is not unlawful in such loans to make an agreement for legal interest and even for a higher rate if a just and proportionate cause exists for this and provided it always keeps within the limits of Christian moderation.

TITLE XXX

PIOUS FOUNDATIONS

(Can. 1544–1551.)

(Innocent XII, Const. *Nuper,* Dec. 23, 1697; Wernz, iii, 194–208; Ferreres, 515; Cocchi, 227; Vermeersch, 865; Blat, 460.)

I. NATURE. (Can. 1544.)

376. 1. The Code calls pious foundations, as understood here, temporal goods given in whatever form, by last will, legacy, donation, to a moral ecclesiastical person, collegiate, or non-collegiate, with the obligation, perpetual or at least of long duration, to employ the annual revenue thereof, for the offering of Masses or the celebration of specified ecclesiastical functions, v. g., a periodical service of reparation, or for the promotion of works of piety or charity.

In this strict canonical sense a pious ecclesiastical foundation differs from a pious legacy left for purposes of religion or of charity to private persons or to lay organizations such as the conferences of St. Vincent de Paul. The Ordinary has the right to watch over the fulfillment of these but they do not become ecclesiastical property. (Can. 1515.)

It differs also from donations or bequests made to an ecclesiastical person for a special, particular work, like the erection of a chapel, the purchase of statues, etc.; and likewise from the founding of an institute, school, convent, etc.

It essentially supposes a gift made to an already existing moral ecclesiastical person that must use the revenues thereof for purposes of piety or charity, permanently or for a long period of time, fifty or forty years; some say at least twenty. (Blat, 462.)

2. When duly accepted the foundation gives rise to a synallagmatic contract, *do ut facias,* the founder giving a capital and the recipient assuming the obligation of justice to fulfil the specified conditions. Should the latter fail to comply with his promise he would lose all right to the portion of the revenues corresponding to the works neglected by him. Thus if out of the revenues of a foundation a sum of ten dollars is set aside for five annual Masses, the full stipend must go to the priest who does say the Masses not to the rector of the church who should have celebrated them.

II. RIGHTS AND DUTIES OF THE ORDINARY.

(Can. 1545–1547.)

377. 1. *Determination of Endowment.* It is for the local Ordinary to fix the minimum of endowment required for a given foundation and regulate the distribution of the revenues as far as needed.

Thus if a person wishes to establish a foundation for the education of a poor student, the giving of a mission in the parish every five years and

the annual celebration of a service for the repose of his soul, diocesan statutes or particular instructions from the Bishop should determine the capital necessary as a condition for assuming those obligations. They should also define what portion of the revenues will go for the education of the student, for the mission, and for the service respectively.

In this allowance ought to be made for possible depreciation of money or decrease in the income, and account taken of the trouble involved in the administration of the foundation.

2. *Acceptance of Foundations.* (Can. 1546.) For the valid acceptance of any such foundations the Ordinary of the place has to give his assent in writing. Presumed, interpretative, tacit, implicit consent does not suffice.

Before granting it the Bishop must find out whether the person concerned can prudently assume these new obligations and discharge them without detriment to others previously contracted.

He should see also that the revenues left be sufficient and the compensation offered proportioned to the burden imposed according to the custom of the relative diocese, that, for example, the stipend for Masses be not inferior to, or liable to fall soon below, the usual one in the place.

In these matters the patron of a church has no right to interfere.

378. 3. *Investment of Foundation Funds.* (Can. 1547.) The money and movable property received as endowment of a foundation ought

to be invested as soon as possible. Meanwhile the law commands to deposit them in a place designated by the Ordinary and offering all desirable security, v. g., money in a bank, titles in a safety vault, other property like stock or produce in the hands of a reliable person till sold.

For the investment itself the Ordinary, after consulting the parties concerned, the founder, the representatives of the person that assumes the obligation, and the board of administrators, chooses the one which he deems both safe and most advantageous to the foundation.

In order to avoid danger of confusion each investment should bear express and specific mention of the obligation connected with it.

This does not necessarily mean that to each foundation or obligation must correspond a distinct investment. Some canonists advocate what they call the system of conjunction as opposed to division or specialization of endowments. They see an advantage in consolidating all foundations existing in a church so as to form one common capital on which all the obligations would rest. Thus as when one of the investments loses in value the other may gain it more readily remains possible to carry out the intentions of the various founders. (Vermeersch, n. 837.)

4. *General Administration.* In regard to administration, distribution of revenues, faithful observance of the clauses of the contract, control of the Ordinary and account rendered to him the same rules govern pious foundations as pious legacies, last wills and testaments. (Can. 1514–1517, 1525; 1549.)

III. RECORDS OF PIOUS FOUNDATIONS.

(Can. 1548–1549.)

379. 1. Foundations can be made orally, for example, by clear expression of the author's mind in presence of two witnesses, but as a safeguard, the church commands to put them in writing, and this, no doubt, without delay, with the formalities necessary to give proving force to the document.

2. One copy of this record should remain in the archives of the church or institution that has the responsibility of the foundation and another should be kept in the diocesan archives.

3. Every church or institution entrusted with pious foundations must have the list of the obligations arising therefrom and preserve it in a safe place in the rectory.

4. Besides the book in which rectors of churches or chapels ought to enter the manual Masses they receive (Can. 843) every church or institution should have another one carefully preserved by the rector containing a list of all the obligations temporary or perpetual resulting from pious foundations with indication of their fulfillment and of the offering connected with them so that a complete account of everything may be given to the Ordinary. The present law does not require the posting of this list in the sacristy.

IV. PIOUS FOUNDATIONS IN RELIGIOUS CHURCHES.

(Can. 1550.)

380. For foundations in churches or institutions belonging to exempt religious the Ordinary who according to the preceding canons (1545–1549)

must approve and accept them, define conditions for them, watch over their administration and receive an account of it, is the religious superior.

This applies to parochial churches themselves provided they belong to the religious not to those committed to religious but belonging to the diocese.

The law does not distinguish here between religious orders as long as they enjoy exemption.

V. REDUCTION OF FOUNDATIONS. (Can. 1551.)

381. 1. The Holy See reserves to itself exclusively the reduction of obligations resulting from pious foundations, unless the charter itself contains a different disposition granting that power, v. g. to the Bishop; this concession may extend even to Masses as officially declared (July 14, 1922).

As said before in connection with pious legacies should fulfillment of these obligations become impossible through no fault of the administrator, the Ordinary after consulting all parties concerned may lighten the burden without departing more than really necessary from the intentions of the founder. This, moreover, does not affect Mass obligations which remain reserved to the Holy See even under those circumstances.

2. Indults granted for the reduction of foundation Masses are of strict interpretation and do not apply either to Masses due on a different title, a manual offering, another species of contract, a legacy; or to other obligations imposed by the foundation.

3. A general Indult for reduction of obligations attached to a foundation must always be

understood as meaning, except for some indication to the contrary, permission for the grantee to reduce other obligations first and Mass obligations only as a last resource.

Inculpable loss or destruction of the endowment extinguishes the obligations connected with it but not prescription even of very long duration.

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